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Manl-ID: MAOPP1 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 1

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## SECTION 1. ACTIVITIES AND STANDARDS OF CONDUCT (SEE MIOG, PART I, 281-16.4 (3).)

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DATE 02-21-2007 BY 60324 AUC BAW/CPB/STP

### 1-1 INTRODUCTION (See MAOP, Part I, 1-16.1.)

Regulations concerning the conduct and activities of employees are published in the Code of Federal Regulations (CFR), Title 28, Part 45.735 and Part 45, Appendix; and Title 5, Parts 2634, 2635, and 2636. Their source is found generally in Departmental Order 350-65 dated 12/28/65, as amended by Departmental Order 960-81 dated 10/26/81, which provides that employees shall conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them. (See MAOP, Part I, 13-1(4).)

(1) Departmental Order 350-65, as amended by Departmental Order 960-81 dated 10/26/81, further provides that no Department of Justice employee shall participate personally and substantially as a government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, in which, to his/her knowledge, he/she, his/her spouse, minor child, partner, organization in which he/she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless authorized to do so by the Deputy Attorney General. This prohibition includes such financial interests as ownership of securities of corporations or other entities which may become involved in Bureau investigation. The prohibited actions include supervisory decisions and recommendations, as well as investigative activities. Any employee receiving an assignment involving any matters in which employee has a direct or indirect financial interest as defined in the departmental order shall immediately advise his/her superior and shall be relieved of such assignment. Should there be a strong reason for requesting the Department's approval for the employee to participate in the assignment, the matter should be submitted to FBIHQ for consideration regarding presentation to the Department. In any event the employee should not participate in such assignment until the Department's authorization has been received. The departmental order specifically exempts from the above prohibition the stock, bond, or policy holdings of an employee in a mutual fund, investment company, bank, or insurance company which owns an interest in an entity involved in the matter provided that fair value of the employee's holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank.

(2) The Order also provides that employee may not, except in the discharge of his/her official duties, represent anyone else before a court or government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another. An employee may not participate in his/her governmental capacity in any matter in which he/she, his/her spouse, minor child, outside business associate or person with whom he/she is negotiating for employment has a financial interest. Employees may not receive any salary, or

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supplementation of his/her government salary, from a private source as compensation for his/her services to the government. (See MAOP, Part I, 20-6.1 (2) and (3) and 20-6.3.2 (2).)

(3) FBI employees whose official responsibilities include research, recommendations, or decisions regarding Bureau insurance programs may not serve concurrently as an officer or member of the Board of Directors of any insurance group or association.

(4) Personal and Business Relationships: Unless prior authorization has been granted, an employee is prohibited from participating in a matter involving specific parties which he/she knows is likely to affect the financial interests of a member of the employee's household, or in which the employee knows a person with whom he/she has a covered relationship is or represents a party, if he/she determines that a reasonable person with knowledge of the facts would question the employee's impartiality in the matter.

Definitions of terms:

An employee has a COVERED RELATIONSHIP with:

- a person, other than a prospective employer described in Title 5, CFR, 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship, other than a routine consumer transaction;
- a person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;
- a person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- any person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or,
- an organization, in which the employee is an active participant.

(5) Extraordinary payments from former employers: Unless a prior waiver has been received under Title 5, CFR, 2635.503(c), an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party, if the employee received an extraordinary payment from that person prior to entering government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Definitions of terms:

EXTRAORDINARY PAYMENT means any item, including cash or an investment interest, with a value in excess of \$10,000, which is paid:

- on the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a government position; and,
- other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into federal service.

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FORMER EMPLOYER includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(6) ETHICS ADVICE AND TRAINING

(a) The FBI's Deputy Designated Agency Ethics Official is the Chief, Legal Advice and Training Section, Office of the General Counsel (OGC). This person, on the FBI's behalf, is responsible for coordinating and managing the FBI's ethics program. The FBI's ethics official has authority to delegate certain responsibilities, including that of providing ethics counseling, to one or more deputy ethics officials. Employees of the Administrative Law Unit (ALU), OGC, and the Chief Division Counsel (CDC) have been delegated the authority to provide ethics counseling and advice.

(b) Initial Ethics Orientations. All newly hired employees are required by regulation to receive an initial ethics orientation within 90 days of entering on duty. An initial ethics orientation consists of the following: 1) providing each employee with a copy of Part I of Executive Order (EO) 12674, entitled "Principles of Ethical Conduct for Government Officers and Employees," as amended, and Part 2635 of 5 CFR, and/or a summary thereof, together with any agency supplemental regulations; 2) informing the employee of individuals available to answer questions regarding the employee's ethical responsibilities; and 3) providing the employee with one hour of official duty time to review the above materials. Newly hired Special Agents and support employees at FBIHQ will receive an initial ethics orientation during training or orientation courses conducted by the Training or Personnel Divisions. SACs are responsible for ensuring that support employees hired within their field offices receive an initial ethics orientation.

As the FBI's ethics program is subject to audit by the Office of Government Ethics and the Department of Justice, the Training and Personnel Divisions and each field office shall, prior to January 15 of each year, verify and report annually to the ALU, OGC, that all newly hired employees have been given an initial ethics orientation within 90 days of entering on duty.

(c) Annual Ethics Training. Certain employees are required by regulation to receive one hour of ethics training annually. These employees include: 1) the Director; 2) any individual required to file a Public Financial Disclosure Report (SF-278) (i.e., all Senior Executive Service employees); and 3) any individual required to file a Confidential Financial Disclosure Report (OGE-450) or, in the alternative, a "Conflict of Interest Certification." Annual ethics training must include at a minimum, a review of the following: 1) the employee's responsibilities under Part I of EO 12674, as amended; 2) Part 2635 of 5 CFR, together with any agency supplemental regulations; and 3) a review of the employee's responsibilities under the conflict of interest statutes found at Title 18, USC, Sections 202-209. Annual ethics training and reporting requirements will be coordinated by the ALU, OGC, and assisted by the Chief Division Counsels.

(d) Employees who have questions about the application of the Office of Government Ethics (OGE) standards of conduct or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating the OGE standards of conduct or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics

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official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are NOT protected by an attorney-client privilege. An agency ethics official is required by Title 28, USC, Section 535 to report any information he/she receives relating to a violation of the criminal code, Title 18 of the United States Code.

(e) Employees on detail to other agencies should refer to MAOP, Part I, Section 1-28.

**(7) OUTSIDE EARNED INCOME LIMITATIONS APPLICABLE TO CERTAIN  
PRESIDENTIAL APPOINTEES AND OTHER NONCAREER EMPLOYEES**

A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(8) In furtherance of the above, the Bureau expects its employees to so comport themselves that their activities both on and off duty will not discredit either themselves or the Bureau. Failure by an employee to follow these guidelines may result in appropriate disciplinary action including possible dismissal. The rules and regulations regarding official and personal conduct which govern the granting of individual access to and use of Bureau cryptomaterials appear in the COMSEC CUSTODIAN MANUAL (CHAPTER II, PAGES 6-11). (SEE (2) above.)

(9) The principles embodied in Executive Order 12674 dated 4/12/89, establishing fair and exacting standards of ethical conduct for federal employees, are set forth as follows:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- (e) Employees shall put forth honest efforts in the performance of their duties.
- (f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the government.
- (g) Employees shall not use public office for private gain.

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- (h) Employees shall act impartially and not give preferential treatment to any private organization or individual.
- (i) Employees shall protect and conserve federal property and shall not use it for other than authorized activities.
- (j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official government duties and responsibilities.
- (k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- (l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those - such as federal, state, or local taxes - that are imposed by law.
- (m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap. (See MAOP, Part I, 4-1, for DOJ policy.)
- (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

These principles were established to ensure that every citizen can have complete confidence in the integrity of the federal government. Accordingly, employees are expected to adhere to these fundamental rules of ethical service. (See MIOG, Part II, 31-5(6)(b) and 31- 6(1)(e).)

**(10) ETHICS REFORM ACT OF 1989 HONORARIUM BAN**

- (a) Department of Justice (DOJ) employees have long been prohibited from receiving compensation or anything of monetary value for a consultation, lecture, teaching, discussion, writing, or appearance, the subject of which is devoted substantially to the responsibilities, programs or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information.
- (b) The ban on receipt of honoraria by federal employees, imposed by Title VI of the Ethics Reform Act of 1989, was overturned in part by the United States Supreme Court. As a result, FBI employees at grade GS-15 or below are no longer subject to the ban. The status of the ban with regard to other FBI employees is still being determined by the Department of Justice. Additionally, all employees continue to be subject to the restrictions on receiving compensation for teaching, speaking and writing imposed by Section 2635.807 of Title 5, Code of Federal Regulations. Contact the Administrative Law Unit for further clarification.
- (c) Deleted
- (d) Deleted
- (e) Deleted
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- (g) Deleted
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(i) Deleted

(j) Deleted

(k) Inquiries concerning outside employment requests from Special Agents (SAs) may be directed to the Adjudication Unit, Office of Professional Responsibility. Similar requests concerning support personnel should be directed to the Personnel Security Unit, National Security Division. The Supreme Court's decision overturning the honoraria ban has little or no impact on SAs since they are generally precluded from engaging in outside employment. See Manual of Administrative Operations and Procedures (MAOP), Part I, Section 20-6.3.2.

(11) ETHICS REFORM ACT OF 1989 POST-EMPLOYMENT RESTRICTIONS

(a) Department of Justice (DOJ) employees have been prohibited since 1980 under Title 5, Code of Federal Regulations (CFR), Part 2637, from certain post-employment conflict of interest activities as enumerated in Title 18, United States Code (USC), Section 207. As a result of amendments to Title 18, USC, Section 207, effective January 1, 1991, and implementing regulations codified at Title 5, CFR, Part 2641, FBI employees who retire/resign after that date are subject to substantially revised post-employment restrictions. Employees who left FBI service prior to January 1, 1991, remain regulated by former Section 207 and by its implementing regulations codified at Title 5, CFR, 2637.

(b) The provisions of Title 18, USC, Section 207, do not bar any FBI employee from accepting employment with any private or public employer after leaving federal service. However, they do prohibit employees from engaging in certain activities on behalf of entities or persons other than the United States.

(c) A lifetime restriction applies to all former employees barring them from representing an outside organization in dealing with the government in connection with a matter in which they were personally and substantially involved during their government employment. This restriction begins upon termination from government service and lasts as long as the particular matter does. Title 18, USC, Section 207(a) (1).

(d) An employee can participate "personally" in a matter even though he/she merely directs a subordinate's participation. The employee participates "substantially" if his/her involvement is of significance to the matter. Thus, an employee's participation in a single critical step will be sufficient to trigger the restrictions of this statute.

(e) Section 207(a) (1) does not apply unless a former employee communicates to or makes an appearance before the United States on behalf of some other person. "United States" refers to any employee of any department, agency, or court of the United States. The term does not include the Congress and, therefore, communications to or appearances before Members of Congress and legislative staffs are not prohibited. There is no prohibition against an employee representing himself/herself before the United States or acting on behalf of the United States.

(f) A communication to or appearance before the United States is not prohibited unless it concerns the same matter in which the former employee participated personally and substantially while employed with the government. A "communication" can be oral, in writing, or through electronic transmission. An "appearance" extends to a mere physical presence at a proceeding when the

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circumstances make it clear the former employee's attendance is intended to influence. The prohibition does not apply to an appearance or communication involving purely social contacts, a request for publicly available documents or a request for purely factual information.

(g) A two-year restriction applies to all former employees barring them from representing another person/organization in matters before the government for which they had knowledge or should reasonably have known was pending under their official responsibility during the last year of their government service. Title 18, USC, Section 207(a) (2). This provision is identical to the lifetime restriction discussed in (c) supra, except that it is shorter in duration and requires only that the individual have had official responsibility for a matter while employed by the government. Official responsibility would include the supervision of a subordinate employee who is personally and substantially involved in the matter although the former employee was not. The two-year period is invoked as a "cooling off" period during which former employees cannot unduly influence former subordinates in their official actions. (See MAOP, Part I, 20-6.1 (5).)

(h) For one year after an employee terminates his/her government service, he/she may not represent, aid or advise another person/agency on trade or treaty negotiations which were ongoing during the last year of the employee's government service in which the employee personally and substantially participated. This provision will have very little impact on FBI employees. Title 18, USC, Section 207(b).

(i) One year after an employee terminates a "senior" position with the FBI, the employee may not represent another person/agency before the FBI on any matter which was pending during the one-year period prior to his/her termination from the "senior" service position. This one year "cooling off" period begins when the employee ceases to be a senior employee, not when government service is terminated. Title 18, USC, Section 207(c).

1. This prohibition applies only to those individuals within the FBI in an Executive Schedule position or whose rate of basic pay (without any locality-based pay adjustments) is equal to or greater than the rate of basic pay payable to Senior Executive Service level 5 employees. The employee need not have been involved in any way in the matter at issue for this restriction to apply.

2. The Office of Government Ethics has issued regulations for Section 207(c) which designate the FBI as a distinct and separate component of the DOJ for the purposes of the restrictions of Section 207(c). Therefore, a former "senior" FBI employee may communicate or appear before any government agency or DOJ component, except the FBI, on behalf of another individual within one year after leaving their senior position to influence official actions without violating this prohibition.

(j) For ONE YEAR after terminating a senior position, the employee may not knowingly attempt to influence a decision of an employee of the United States by representing, aiding or advising a foreign entity. This restriction is measured from the date the employee terminates his/her senior position. A foreign entity includes a government of a foreign country or a foreign political party. A foreign commercial corporation is not generally considered a "foreign entity" unless it exercises the functions of a sovereign. Title 18, USC, Section 207(f).

(k) Title 18, USC, Section 207(j) provides several exceptions to Section 207's substantive prohibitions. Several of these exceptions are not applicable to all of the substantive restrictions.

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1. A former employee is not restricted by Section 207 from engaging in post-employment activities in carrying out official duties on behalf of the United States, nor will a "senior" employee violate Section 207(c) when carrying out official duties as an employee and if made on behalf of an agency or instrumentality of a state or local government, an accredited degree-granting institution of higher education, or a hospital or medical research organization which is tax exempt under Title 26, USC, Section 501(c) (3).
2. A former employee is not barred from representing, aiding, or advising an international organization in which the United States participates, provided the Secretary of State certifies in advance that such activity is in the interests of the United States.
3. A former "senior" employee will not violate Section 207(c) if he/she makes a statement based on his/her own special knowledge in the particular area that is the subject of the statement, provided that the employee receives no compensation for making the statement.
4. A former employee will not violate Section 207(a) (1), (a) (2), or (c) if he/she makes a communication solely for the purpose of furnishing scientific or technological information consistent with agency procedures or if the Director publishes a certification in the FEDERAL REGISTER attesting to the individual's qualifications and that the national interest would be served by the former employee's participation.
5. A former employee is not restricted from giving testimony under oath or from making statements required to be made under penalty of perjury, except for expert opinion testimony. Expert opinion testimony may only be given on behalf of the United States pursuant to a court order if the former employee is subject to the lifetime prohibitions contained in Section 207(a) (1) relating to the matter to be testified on.
  - (l) A willful violation of this section could be punishable by imprisonment of not more than five years. A violation that is not willful would be a misdemeanor which is punishable by imprisonment of not more than one year. A civil action may also be brought by the Attorney General (AG) which could carry a penalty (fine) of not more than \$50,000. The AG may petition for an injunction against persons he/she has reason to believe are engaged in conduct prohibited by Section 207. Title 18, USC, Section 216.
  - (m) Inquiries concerning post-employment restrictions should be addressed to the Section Chief, Legal Advice and Training Section, Office of the General Counsel, who is the FBI's Deputy Designated Agency Ethics Official (DDAEO). Interpretations of Section 207's restrictions are fact-specific, depending upon the former employee's proposed outside employment and his/her former FBI position and its responsibilities.
  - (n) Upon termination of government service employees should be advised of these restrictions during their exit interview and this should be documented on the exit interview Form FD-193.

**1-2 PERSONAL CONDUCT (See MAOP, Part 1, 1-25.2.)**

- (1) Employees should never cause themselves to be mentally or physically unfit for duty. They are not permitted to consume alcoholic beverages during working hours, including that time allotted for meal periods or any period of leave taken if the employee intends to return to work before the

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termination of working hours, with limited exceptions necessary for Special Agents in certain undercover or surveillance assignments. Employees are not permitted to consume alcoholic beverages on Bureau premises while on or off duty, unless otherwise granted an exemption by the Director, the Assistant Director or Deputy Assistant Director of the Administrative Services Division, or by the Assistant Director of the Training Division with regard to the FBI Academy. Employees may not consume alcoholic beverages while on other federal property without the permission of the cognizant agency head or designee. Employees must be held accountable for their on- and off-duty alcohol-related misconduct, whether OR NOT they are specifically CHARGED with an alcohol-related offense by a local law enforcement agency. (See MAOP,

Part 1, 1-30 through 1-30.4.) The use of illegal drugs or narcotics or the abuse of any drugs or narcotics is strictly prohibited at any time. Employees must not, at any time, engage in criminal, dishonest, immoral or disgraceful conduct or other conduct prejudicial to the government.

**(2) USE OF OFFICIAL TIME -**

(a) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform his/her official duties. An employee not under a leave system, including a Presidential appointee exempted under Title 5, USC, Section 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his/her time in the performance of official duties.

(b) An employee shall not encourage, direct, coerce, or request subordinates to use their official time to perform activities other than those required in the performance of their official duties or authorized in accordance with law or regulation.

**1-2.1 Sexual Harassment Policy (See MAOP, Part 1, 1-2.2.)**

(1) Sexual harassment is in violation of Section 703 of Title VII of the Civil Rights Act of 1964, and is defined by the Equal Employment Opportunity Commission (EEOC) as follows:

"Unwelcome sexual advances, request for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

There are two forms of sexual harassment: (1) quid pro quo, and (2) hostile work environment. Quid pro quo involves the requirement of sexual favors as a term or condition of employment, or requires submission to sexual advances for favorable consideration for workplace opportunities or promotions. A hostile work environment is created by supervisors or co-workers by unwelcome conduct of a sexual nature. Examples of conduct which may be considered sexual harassment may include, but are not limited to:

- (a) oral or written comments of a sexual nature;
- (b) comments regarding an individual's body;

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(c) statements, anecdotes, jokes, teasing and/or gestures of a sexually degrading nature, which are used to describe an individual;

(d) physical contact or threats of physical contact; or

(e) display of books, magazines, or pictures of a sexual nature that are, in the view of the recipient, offensive and unwelcome.

(2) Sexual harassment is strictly prohibited within the FBI workplace, and will not be tolerated. All employees are expected to conduct themselves in a professional manner in all work environs and in all their dealings with other employees and those individuals outside the FBI with whom they have contact in the course of official business.

Sexual harassment is unlawful and must be prevented. In all instances where allegations are substantiated, disciplinary action will be taken. Supervisors who become aware of such conduct and fail to take proper action may also be subject to disciplinary action. Proper action includes bringing the incident to the attention of the EEO Officer (the FBI Sexual Harassment Prevention Coordinator), the Special Agent in Charge, Assistant Director, or similar management officials. Upon receipt of such allegations, the management officials will promptly investigate the incident. If appropriate, disciplinary action will be taken against those employees who commit such misconduct. Disciplinary action resulting from a substantiated incident of sexual harassment may range from oral reprimand to dismissal. Employees are also reminded that such prohibited conduct may lead to personal, legal, and financial liability.

Individuals may best gauge the appropriateness of their language or conduct by first asking themselves the question, "Is this something I would want done or said in the presence of my mother, sister, wife, or daughter?" This example may appear trivial; however, it remains as the most reliable indicator as to the appropriate nature of a word or action.

(3) When employees find conduct offensive or unwelcome, they are encouraged to first bring it to the attention of the offending party. If the behavior is not corrected, or if the initial instance of harassment is particularly offensive, the employees should bring this conduct to the attention of the appropriate supervisor, or, if necessary, a higher-level official.

(a) Individuals who believe they have been the victim of sexual harassment may seek redress from their situation through the Equal Employment Opportunity (EEO) process by initiating contact with an EEO Counselor within 45 days of the alleged incident. If possible, the EEO Counselor will first attempt to resolve the issue through informal resolution. (See MAOP, Part 1, 4-4.)

(b) Employees are encouraged to report instances of suspected sexual harassment to appropriate management officials and/or to the Adjudication Unit, Office of Professional Responsibility (OPR). (See MAOP, Part 1, 13-1(2), and 13-2(1).)

(c) In addition to reporting allegations of sexual harassment to management or through the EEO and OPR processes, employees may wish to discuss matters with the FBI's Prevention of Sexual Harassment (POSH) Coordinator. She may be reached at (202) 324-6690. Moreover employees serving in management, EAP, health care delivery and ombudsman roles may consult with the POSH Coordinator for policy, guidance in advising employees.

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(d) For employees who want more information regarding their rights and alternatives, have specific questions, or wish to utilize another reporting mechanism for sexual harassment allegations, they may telephone the Sexual Harassment Helpline, (202) 324-7777; TTY users may call (202) 324-2394. The Helpline is staffed by the Office of Equal Employment Opportunity Affairs during normal duty hours. After hours, individuals may leave a message, which will be returned the next business day. In case of an emergency, employees should contact the FBI switchboard at (202) 324-3000 and ask for the Equal Employment Opportunity Duty Officer.

### **1-2.2 Informal Resolution Process (IRP)**

The Informal Resolution Process (IRP) has been instituted as an alternate method by which to address allegations of sexual harassment. It is separate and apart from the Equal Employment Opportunity (EEO) and Office of Professional Responsibility (OPR) processes which continue to be available, although the three are not mutually exclusive. Mandated by the Attorney General, this process is a vital step to the prevention of sexual harassment within the Department of Justice (DOJ), and attempts to provide an expeditious and meaningful resolution to employees who feel that they have experienced sexual harassment in any form. This process is administered by employees known as "Facilitators." (See MAOP, Part I, 1-2.1, for the FBI's Sexual Harassment Policy, and a detailed discussion of the definition of sexual harassment. Also, see the "Informal Resolution Process Handbook" for further details about the IRP.)

- (1) Each field office and Headquarters division should have at least two (2) trained Facilitators whose names and contact telephone numbers are to be prominently displayed.
- (2) Employees should be aware that any retaliation resulting from their use of the IRP is a violation of the Civil Rights Act of 1964 (Title VII) as amended, and may be addressed through the EEO process and/or OPR.
- (3) The IRP has a very short time frame in order to afford expedited attention or corrective action that can be either temporary or permanent. The DOJ has mandated that the Facilitator begin the inquiry within seven (7) calendar days from the time of initial contact, and that the inquiry be completed within 30 calendar days (with a provision for a 15 day extension). It is anticipated that FBI Facilitators will not require the entire 30 days, or the 15 day extension, in most cases since these matters are of the utmost priority. Facilitators should be able to determine the facts, present them to the SAC/Division Head, and have a final decision on the matter within a period of days rather than weeks.
- (4) Upon being contacted by a complainant, Facilitators will provide explanations of the various avenues by which sexual harassment complaints may be addressed by furnishing the complainant with the required forms and handouts.
  - (a) If the complainant is seeking disciplinary action against the alleged offending party, the most appropriate forum is the OPR process. If the complainant wishes to initiate the OPR process, the Facilitator will advise the SAC who will refer the matter to OPR.
  - (b) If the complainant is seeking "make-whole" corrective relief, the EEO process should be invoked. If the complainant desires to invoke the EEO process, the Facilitator will provide the

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names and contact numbers of the EEO Counselors within that office/division. Contact with the Facilitator does not constitute contact with an Equal Employment Opportunity (EEO) Counselor for the purpose of initiating EEO precomplaint counseling, even if the Facilitator is an EEO Counselor. Should the complainant elect to go forward with the allegation of sexual harassment under the EEO process, she/he must initiate precomplaint counseling with an EEO Counselor within 45 days from the date of the alleged discriminatory activity.

(c) If the complainant is simply seeking to be transferred to another area within their division or to have someone speak to the alleged offending party, informal resolution through the IRP may present the best recourse.

(d) If the complainant is seeking a remedy beyond the limits of the IRP informal settlement, the complainant must also proceed through either the OPR and/or EEO process, or all three simultaneously. Utilization of the IRP does not preclude the complainant from concurrently pursuing OPR and EEO avenues.

(5) Once the Facilitator has thoroughly interviewed the complainant and determined the facts as known at that point, the SAC/Division Head should immediately be advised of the facts prior to initiating any inquiry.

(a) If the complaint is against the SAC/Division Head, the Facilitator will discuss the matter with FBIHQ prior to advising the SAC/Division Head and conducting any inquiry.

(b) By coming to the Facilitator and raising issues of sexual harassment, there is no provision for anonymity.

(c) It is within the discretion of the SAC/Division Head to temporarily transfer or detail within that division the complainant and/or the alleged harasser while awaiting the results of the Facilitator's inquiry into a complaint. The latter temporary transfer is not to be interpreted as an indicator of the credibility being attached to the complaint, but should be viewed as a necessary measure to ensure that the alleged behavior, or any reprisal, does not occur throughout the course of the inquiry.

(d) Utilization of the IRP does not preclude or abrogate the SACs/Division Heads from responsibility to refer matters of serious misconduct to OPR for appropriate administrative action. Serious misconduct is defined as conduct which has a significant adverse impact on the FBI, and includes possible violations of administrative policy as well as potential criminal activity. SACs/Division Heads will, however, allow Facilitators appropriate time to conduct their inquiry before reporting these matters to OPR except in the most egregious situations.

#### **1-2.2.1 Conducting/Resolving the IRP Inquiry**

(1) The Facilitator will conduct a limited inquiry to determine the facts of the matter. The inquiry will normally consist of interviews with the complainant, the alleged offending party and witnesses, and a review of any pertinent documents. While this is an informal process, all employees are expected to fully cooperate.

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(2) The Facilitator will expeditiously provide the SAC/Division Head with the facts and serve as an impartial mediator to attempt an informal settlement of the matter. The SAC/Division Head may request assistance from the Facilitator in composing any settlement or in the drafting of any communication to FBIHQ referring cases of serious misconduct to OPR. Those communications become a part of the OPR file and are not to be kept with IRP documents.

(3) The SAC/Division Head will decide the appropriate means, if any, of resolving the matter at hand. Resolutions will be limited to speaking with the offending party, and/or effecting the permanent intradivisional transfer of the offending party if the inquiry develops corroboration of the alleged sexual harassment. The decision will depend upon the nature of the alleged activities and the immediate corrective action desired by the complainant.

(a) The SAC/Division Head may consider the intradivisional transfer of the victim as part of an informal resolution only if the complainant concurs that her/his being moved is a reasonable solution to the situation.

(b) If the offense does not rise to the level of serious misconduct and appropriate parties agree to the informal resolution, the SAC/Division Head will not be required to refer the matter to OPR, and the complaint will be considered resolved.

(c) The SAC/Division Head retains the right to take additional measures, such as transferring the alleged offending party within the division, and/or discussing the impact of this inappropriate conduct upon the workplace with the alleged violator.

(d) If the SAC/Division Head believes stronger disciplinary considerations are warranted against the alleged offending party, the matter must be referred to OPR for their consideration of administrative action.

(4) In those instances where an informal resolution is not achieved through the IRP, complainants may wish to avail themselves of the EEO and/or OPR processes.

#### **1-2.2.2 Records Conducting/Resolving the IRP Inquiry**

(1) Although the IRP is an informal process, certain statistics are required to be retained for response to requests from the DOJ regarding utilization of this new process. This information is being retained for statistical purposes only and no information or record of the names of complainants or alleged offenders will be placed in any FBI file. Any and all notes taken by the Facilitator during the course of the inquiry will be destroyed upon submission of the statistical data to the IRP Coordinator located in the Organizational Program Evaluation and Analysis (OPEA) Unit, Inspection Division, FBIHQ.

(2) The only forms used to record IRP contacts are an Acknowledgement Form used to inform complainants of a possible conflict if the IRP and EEO processes are selected; and a Record of Inquiry used as a tracking device which contains limited information.

(3) While in the Facilitator's custody, all IRP documents are to be afforded appropriate security and confidentiality in that they are not to be shown to or discussed with anyone other than the complainant, the SAC/Division Head or their designee, and the IRP Coordinator in OPEA at

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FBIHQ. All notes taken by the Facilitator during the course of the inquiry should be destroyed upon completion of the Record of Inquiry form, and that destruction noted on the Record of Inquiry form.

(4) The original executed Acknowledgement Form, and the Record of Inquiry form should be sealed in a suitable envelope and mailed to the IRP Coordinator within seven (7) calendar days of the conclusion of this matter. These records will be maintained for an appropriate period of time after which they will be destroyed.

(5) The Facilitator will also collect and record statistical data and submit it to the IRP Coordinator as requested. The OPEA Coordinator will compile quarterly and/or annual reports as required by DOJ, and furnish copies of those reports to the OEEOA.

### **1-3 USE OF GOVERNMENT PROPERTY (See MIOG, Part 2, 10-18.1.)**

An employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes.

#### **DEFINITIONS OF TERMS:**

GOVERNMENT PROPERTY includes any form of real or personal property in which the government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the government mails, automated data processing capabilities, printing and reproduction facilities, government records, and government vehicles.

AUTHORIZED PURPOSES are those purposes for which government property is made available to members of the public or those purposes authorized in accordance with law or regulation. Authorized purposes also include personal uses that involve only a negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to nongovernment accounts. The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of government property, and may be revoked or limited at any time by any supervisor for any business reason. In using government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties.

FBI property charged to an employee remains the property of the FBI while employed by the FBI. All employees are to ensure that government property is safeguarded outside of FBI office space. All issued property is to be adequately secured in a manner to ensure that the property is not accessible or useable by any other person. It is the employee's responsibility to appropriately secure government property. MIOG, Part 2, Section 12, should be referred to regarding the safeguarding of firearms outside of FBI office space. In addition, employees have the responsibility of preventing the loss and destruction of Bureau property wherever possible. Employees are to ensure that issued FBI property is returned at the time an employee separates from the FBI.

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(1) All government property, including automobiles, boats and other methods of conveyance, supplies, equipment, telephones and facilities are to be used solely for official purposes and not converted to any employee's personal use except for use in accordance with the foregoing Authorized Purposes provisions. With the authorization of the SAC, Assistant Director or a designated management representative, the use of equipment for training and research during nonwork hours shall be considered "official purposes. Government property authorized for an employee's use during nonworking hours must be appropriately charged out to the employee by executing appropriate property receipt, Form FD-281. The loss, misplacement, theft or destruction of government property issued to any employee must be reported to his/her superior within five calendar days of the loss, misplacement, theft or destruction. The division must report the loss, misplacement, theft or destruction on an FD-500, Report of Lost or Stolen Property form, to the Property Management Unit, Property Procurement and Management Section, Finance Division within ten calendar days. The Accountable Property Officer for the division must sign the FD-500. (See also MAOP, Part 2, 6-7.5.)

(2) All government and FBI records, to include computer records, are to be used solely for official purposes. The use of FBI records, or records made available to the FBI through other government agencies, for the purpose of obtaining information for personal use is strictly prohibited.

(3) The Bureau encourages the use of government property to reward employees and promote morale building, ceremonies, and events where such use, in the opinion of the SAC, increases the efficiency of the Bureau and facilitates a Bureau function. FBI Headquarters' permission should be obtained prior to use of government-owned boats, airplanes, and special purpose vehicles for purposes described above.

(4) Pursuant to Departmental Order 2630.2A, "Protecting And Controlling Federally Controlled Property and Loss/Theft Reporting Procedures," the removal of government-owned property from a federal building is prohibited unless properly authorized through the issuance of some form of property pass. Accordingly, the following procedures shall apply for government-owned property being temporarily removed from a federal building for any such property not otherwise issued/charged out to an employee, such as through the use of the FD-281:

(a) Approved forms, such as the 0-96, "FBI Property Pass," or the FD-79, "Chargeout of Nonexpendable Property," can be used for property pass purposes in place of the Property Management Application's (PMA) Charge Out/In Functions.

1. In field offices, the FD-281, Receipt For Government Property, or the PMA Charge Out Receipt must be executed when property is removed from the office.

2. At FBIHQ, property passes shall be issued by the Finance Division, Property Procurement and Management Section (PPMS). Form 0-96 is to be used and government property shall not be removed from the J. Edgar Hoover F.B.I. Building until this form is properly executed and signed by an authorized individual in PPMS, Finance Division.

(b) Property passes should be prepared in duplicate, unless administrative controls require additional copies. The original shall be given to the employee removing the property from the building, who will, in turn, surrender it to the security guard or other appropriate individual at the

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time the property is removed from the government building. The security guard or other authorized individual is responsible for returning this copy to the Property Procurement and Management Section (PPMS).

(c) Deleted

(d) Deleted

**1-3.1 Bureau Vehicles (See MAOP, Part 1, 12-2.5.1; Part 2, 6-1.2.3.)**

(1) Bureau vehicles (to include government-owned vehicles, and vehicles rented or leased by the FBI) are to be used for official business only. In connection with the use of Bureau vehicles, transportation for other than FBI employees is to be restricted to individuals and their families, or aides accompanying them, who are traveling to attend FBI-sponsored or FBI-participating functions or have other direct business to transact with FBI officials and/or officials of the Department of Justice traveling on official business.

(a) Deleted

(2) Bureau vehicles are allowed to be driven between an employee's residence and work place to enable the FBI to maintain an emergency response capability which is necessitated by the nature of the work and not solely for the personal convenience of employees. In conjunction with this, the most direct and expeditious route to and from the employee's residence should be observed. An employee may, when circumstances warrant such an action, interrupt his/her travel as long as he/she does not deviate from an expeditious route to his/her residence nor impair his/her ability to retain emergency response capability. (See MIOG, Part 2, 34-14, re Victim Specialists.)

(3) FBI employees are authorized to accompany the driver of the Bureau automobile to and from the driver's residence and the place of work provided that the trip is justifiable as necessary for the Bureau to retain its emergency response capabilities and no significant deviation from the most direct route occurs.

(4) An SAC may authorize on a case-by-case basis an Agent's spouse to travel in a Bureau automobile while the Agent is en route to and from a function in which the Agent has an official role, provided the Bureau vehicle is used exclusively as basic transportation to and from the FBI-sanctioned function. The foremost consideration in granting such a request should be whether such travel would be considered to be in the best interest of the government. Among the factors which should be considered are length of time of the function and distance to be traveled. (See MAOP, Part 2, 8-5.)

(5) Should the weight of facts demonstrate that government-owned, -rented, or -leased vehicles were in fact being used primarily for commuting purposes and were clearly not being operated primarily for the benefit of the government, then this would be in violation of Title 31, USC, Section 1344. (See MAOP, Part 1, 1-3.1.2.) Employees should be reminded that Title 31, USC, Section 1349(b) requires a minimum suspension of one month without compensation for anyone who uses or authorizes the use of a government vehicle for other than official purposes. Additional penalties are optional. (See MAOP, Part 1, 13-13.)

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(6) The employee who is authorized to drive the Bureau vehicle between his/her residence and office is considered to be using the vehicle for "official purposes" so that the use is not prohibited by Title 31, USC, Section 1344. The employee is not, however, considered to be on official business such that he/she can use the commuting time to qualify for Availability Pay. The passengers are not on official business when they are riding to and from work with the driver and are, therefore, not eligible for benefits under the Federal Employee's Compensation Act. Any time a Special Agent who is on duty and is en route to or from his/her residence, receives instructions to proceed to an emergency situation, any passengers who are not likewise instructed are to be discharged.

(7) The addition of more passengers subjects the government to increased liability. Assuming the driver is within the scope of his/her employment, the government would be liable for damages suffered by the passengers as a result of the driver's negligence. If the driver is determined to be outside the scope of his/her employment when an accident occurs through the driver's negligence, then the "driver's statute" of the Federal Tort Claims Act, Title 28, USC, Section 2679(b), would be inapplicable, and the driver could be personally liable for damages suffered by the passengers, third parties, and the vehicle itself, as well as the penalties of Title 31, USC, Section 1349(b). The picking up of and discharging of passengers at a point not en route to and from work could place the driver outside the scope of his/her employment. Therefore, the drivers of Bureau vehicles which are authorized to be driven between the residence and office are limited to routes that may normally be traveled to and from work.

(8) Bureau vehicles may be used to transport ill or injured employees to a hospital or health-care facility. Administrative leave is not necessary where a government or personally owned vehicle is utilized to transport a sick or injured employee to a hospital or health-care facility. Form FD-661, "Waiver for Transporting Bureau Personnel Via FBI Vehicles" must be executed. (See MAOP, Part 2, 6-8.2(2).)

Bureau vehicles may not be used to transport ill or injured employees to their residence.

(9) Immediately following an employee's arrest or administrative finding of driving while under the influence (DUI) or while intoxicated, that employee will be prohibited from operating a government motor vehicle. Whenever an employee is found guilty of alcohol-related misconduct, a division head will determine the extent to which the employee's privilege to operate a government motor vehicle will continue to be suspended. In alcohol-related misconduct cases involving the use of a motor vehicle, a presumption will exist that there is a necessity to suspend the employee's privilege to operate a government motor vehicle for a period of not less than ONE YEAR following his/her offense. This suspension will occur regardless whether the nature of the employee's motor vehicle offense has been reduced as a result of judicial review, plea bargaining, or the employee's entry into a diversion or substance abuse program. Whenever a Special Agent is suspended from operating a government motor vehicle as a result of alcohol-related misconduct and following a determination of such misconduct by the Bureau, he/she will NOT be considered eligible to earn premium compensation, such as Sunday pay, holiday pay, night differential, and Availability Pay. Prior to discontinuing eligibility for Availability Pay, the employee will be afforded appropriate adverse action proceedings. (See MAOP, Part 1, 1-30.3, 8-1.12.2 and 12-1.5.)

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### 1-3.1.1 Home-to-Work Use of Bureau Automobiles

- (1) Pursuant to Title 31, USC, Section 1344, the FBI's Home-to-Work Transportation Plan (HTWTP) specifies positions which are expressly authorized for the utilization of government vehicles by FBI personnel on a routine basis for home-to-work transportation. To provide each field office an adequate capacity to respond to emergency and other investigative demands, the positions which are authorized to use a government vehicle on a routine basis include officials in charge of FBI field offices and their alternates (ADICs, SACs, ASACs); field office Supervisory Special Agents; Undercover Special Agents; Special Agents (SAs) assigned to Special Operation Groups; SAs assigned to resident agencies and Legal Attaches; personnel assigned to Special Surveillance Groups; and field office SAs designated for off-duty or emergency response.
- (2) The official in charge (ADIC or SAC) or designated representative(s) is required to maintain a current list of employees authorized to take government vehicles home on a routine basis. A semiannual review must be performed and documented of the personnel authorized to take vehicles home on a routine basis to ensure that emergency and investigative demands of the position continue to require the use of a vehicle. These documented reviews are to be performed semiannually and maintained in an appropriate administrative file and subject to review during the field office inspection.
- (3) In addition to personnel expressly authorized for use of a government vehicle for home-to-work transportation, the official in charge (EAD/AD/ADIC or SAC) or designated representative(s), may authorize the conditional use of a government vehicle for transportation between an employee's domicile and place of employment by completing the Form FD-490, "Authorization to Maintain Bureau Vehicle Overnight at Employee's Residence on an Irregular and/or Emergency Basis." This authorization is based on duties that involve travel from the employee's home to various locations, such as surveillance posts, arrest and search scenes, sites of meetings with operatives, suspects, or witnesses, and other locations. The use of a government vehicle for home-to-work transportation is approved on a conditional basis (FD-490) where such use is essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties requiring the presence of that employee, in an official capacity, at a location other than the office to which he or she is assigned.
- (4) The FD-490 will be completed for the entire period the vehicle is anticipated to be utilized. If the period extends beyond 90 days, a separate FD-490 will be completed to cover every 90 days the requirement exists. An administrative file will be established in each field office and FBIHQ Division for completed FD-490s. The official in charge (EAD/AD/ADIC or SAC) or designated representative(s) is required to perform and document semiannual reviews to ensure that only Bureau vehicles with written authorization and justification (a completed FD-490) are taken home. The documented reviews will be performed semiannually and be maintained in the administrative file and subject to review during the field office inspections. The FD-490s may be destroyed at the completion of the field office's inspection.

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### **1-3.1.2 Rental/Leased Vehicles**

(1) A rental/leased vehicle procured with a personal credit card or one issued under the United States Government Credit Card Program is not a government-leased OR -RENTED vehicle within the meaning of Title 31, USC, Section 1344, as described in MAOP, Part I, 1-3.1 (5). It is FBI policy that vehicles rented or leased by an employee with a personal credit card or one issued under the United States Government Credit Card Program for the primary purpose of conducting official business must be used within the parameters set by the employee's SAC or division head. An SAC or division head may limit the scope of use by considering such factors as the length, nature and location of the assignment. Expenses accrued for use of the rental/leased vehicle outside the scope of employment must be borne by the employee and must not be vouchered. Any employee who is determined to have intentionally violated this section will be subject to administrative action, up to and including dismissal.

(2) Should the rental/leased vehicle become involved in an accident while being driven outside the scope of the employee's duties, the employee is personally liable for damages suffered by passengers, third parties, and the vehicle itself. In order to avoid increased liability to the government while the employee is on duty, the rental/leased vehicle may NOT be used to transport individuals having no direct relationship with official business. Any employee who is determined to have intentionally transported such individuals will be subject to administrative action commensurate with the circumstances.

(3) The transport of passengers in such a vehicle subjects the government to increased liability. Assuming the driver is within the scope of his/her employment, the government would be liable for damages suffered by the passengers as a result of the driver's negligence, provided the passengers were authorized to accompany the driver. If the driver is determined to be outside the scope of his/her employment when an accident occurs through the driver's negligence, then the "driver's statute" of the Federal Tort Claims Act, Title 28, USC, Section 2679(b) would be inapplicable, and the driver could be personally liable for damages suffered by the passengers, third parties, and the vehicle.

### **1-3.2 Property in Vehicles (See MIOG, Part II, 12-1.2 & 12-6.2.)**

Employees are expected to take proper care of any Bureau property issued to them or used by them. See MIOG, Part II, 12-6.2, for policy on maintaining expendable Bureau equipment related to Special Agent safety in vehicles. Any nonexpendable Bureau equipment not related to Special Agent safety is to be maintained in the locked trunk of an unattended Bureau vehicle or vehicle authorized for official use, but should not be left overnight unless operational circumstances dictate otherwise.

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### **1-3.3 Utilization of Facilities by Special Agents Attending School**

Special Agents attending school under the Government Employees' Training Act as an official assignment may avail themselves of stenographic and typing facilities in connection with their studies and preparation of assignments, provided the request for such assistance is specifically approved in advance by the SAC or the ASAC. This authorization does not extend to employees attending school at their own expense.

**1-3.4 Deleted** (See *Security Policy Manual* at [http://rmd.fbinet.fbi/ppu/manuals-desk/manuals\\_published\\_in\\_new\\_format.htm](http://rmd.fbinet.fbi/ppu/manuals-desk/manuals_published_in_new_format.htm))

### **1-3.5 Business Cards and Stationery (See MAOP, Part 1, 1-3.7.)**

(1) Authorization to use the FBI Seal on either business cards or stationery is granted to Bureau officials, Special Agents and certain support employees only for the purpose of ordering such items for their own official use. As such, an FBI employee can authorize a printer to reproduce the Seal for this purpose on an order-by-order basis. The printer, however, cannot use any items prepared with the FBI Seal for advertisement or to solicit business from the public. Authorization for support employees to utilize business cards or stationery, on a select basis, may be obtained by formal written requests to the SAC or the appropriate Assistant Director. Such requests must clearly demonstrate the necessity for the employee's use of business cards or stationery and should be limited to support personnel at the GS-7 level or above. The cards or stationery should contain the following: name, official title, Federal Bureau of Investigation, office address, telephone number and may have the FBI Seal inscribed in the upper left corner.

(2) To facilitate the purchase of business cards, the General Services Administration has negotiated with the Seattle Lighthouse for the Blind to be the exclusive national source for federal employees requiring business cards for official duties. The Seattle Lighthouse for the Blind has been provided with electronic artwork of the FBI's seal to ensure quality reproduction. The cost of business cards purchased from the Seattle Lighthouse for the Blind may be paid for using appropriated funds. Expenses incurred for the purchase of business cards from any other vendor, regardless of the circumstances, must be borne by the employee.

(3) The Seattle Lighthouse for the Blind offers the option of plain offset printed cards in one color, dark blue or black ink, or offset with an embossed gold foil-stamped seal. Because of the significant difference in the price of the plain cards and the embossed cards, the only employees authorized to obtain the embossed cards are the ADICs, SACs, Associate SACs, Legats, and Section Chiefs and above at FBIHQ. Employees who wish to upgrade to the embossed gold foil-stamped seal may do so by placing individual orders and paying for the cards using personal funds. Upon receipt of the cards, the employee may claim reimbursement through submission of a draft request form and a copy of the invoice for an amount equal to the cost of the one-sided plain offset printed business cards. (See MAOP, Part 2, 6-3.6 (8).)

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### **1-3.6 Copies of Official Correspondence and Documents**

Employees are not to make copies for themselves of any reports or correspondence they prepare in the course of their official duties except copies of expense vouchers, Form CA-1 (Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation), nor should they make or maintain possession of copies of official Bureau documents if they have no justifiable need to know the information contained in them. On separation from the Bureau, every employee must return any official documents made or received while in the Bureau's service except for items such as those enumerated above and originals of letters of appointment, commendation, censure or promotion. (See also MAOP, Part I, 1-19, for Bureau rule on disclosure of information, and MAOP, Part I, 20-4.2, for instructions on FBI employees' access to their own personnel files.)

### **1-3.7 Bureau Seal Matters (See MAOP, Part 1, 1-3.5.)**

- (1) It has been the position of the Bureau to deny all requests for commercial reproduction of the FBI's name and initials where a particular product was to be marketed to the public at large. The Director has, however, under certain circumstances, authorized use of the FBI Seal on items when distribution was to be limited to employees and former employees.
- (2) Title 18, United States Code (USC), Section 709, prohibits, without the express written permission of the Director, the use of the name or initials "FBI" or any colorable imitation of such words or initials in any manner which reasonably conveys the impression that the FBI approves, endorses, or authorizes a particular product or business.
- (3) Title 18, USC, Section 701, prohibits the manufacture, sale, possession, or colorable imitation of any insignia of the design prescribed by the head of any department or agency of the United States for use by any of its officers or employees, except as allowed by regulation.
- (4) In conjunction with Section 701, the Department of Justice has issued regulations that are set forth in Title 41, Code of Federal Regulations, Section 128-1.5007, which require permission to reproduce the seal of the FBI for commercial, educational, ornamental, or other purposes by other government agencies or private entities be referred to the head of the respective departmental organization for decision. Requests are reviewed on a case-by-case basis to determine whether approval should be granted.
- (5) Authorization to determine use of the FBI's name, initials, and/or seal in conjunction with the above-mentioned statutes and regulations is vested in the Administrative Law Unit, Office of the General Counsel. All requests for use of the FBI's name, initials, and/or seal in any manner, whether requested by a manufacturer or by a Bureau entity for products exclusively for Bureau use, must be referred to the Administrative Law Unit for review and recommendation.
- (6) Any violations of Title 18, USC, Sections 701 and 709, should be handled in accordance with the instructions set out in Part 1, Section 43-2.1 and 43-3.4 and 43-3.14 (4) of the Manual of Investigative Operations and Guidelines (MIOG).

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#### **1-4 ILLEGAL ACTIVITIES (See MAOP, Part 1, 15-3.2; Legal Handbook for SAs, Part 1, 3-6.4.)**

(1) Illegal activities on the part of any employee, in addition to being unlawful, reflect on the integrity of the FBI and betray the trust and confidence placed in it by the American people. Furthermore, unlawful activities can disqualify one for employment by the government or the United States. It is, therefore, expected that employees will obey not only the letter of the law but the spirit of the law as well whether they be engaged in activities of a personal or official nature. With respect to investigative activities, this admonition particularly applies to entrapment or the use of any other improper, illegal, or unethical tactics in the procurement of evidence. In this regard, it should be especially noted that, in securing information concerning mail matter, the Bureau will not tolerate a violation of law (Title 18, USC, Sections 1702, 1703, 1708, and 1709). Furthermore, employees must not tamper with, interfere with, or open mail in violation of law nor aid, abet or condone the opening of mail illegally by any employee of the U.S. Postal Service.

(2) As a member of a federal investigative agency, FBI employees must at all times zealously guard and defend the rights and liberties guaranteed to all individuals by the Constitution. Therefore, FBI employees must not engage in any investigative activity, including illegal surreptitious entries, which could abridge in any way the rights guaranteed to a citizen of the United States by the Constitution and under no circumstances shall employees of the FBI engage in any conduct which may result in defaming the character, reputation, integrity, or dignity of any citizen or organization of citizens of the United States.

(3) Employees must not install electronic surveillance equipment without FBIHQ written authority.

(4) No brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced nor will force be used greater than that necessary to effect arrest or for self-defense. (See MIOG, Part 2, 12-2.1 and 12-10.4.1 (2); Legal Handbook for SAs, Part 1, 4-2.5.)

(5) All of the foregoing prohibitions, including those pertaining to illegal surreptitious entries, are applicable to all phases of the FBI's work, applicant, criminal, civil, domestic security, and foreign counterintelligence. Violations must be reported to FBIHQ as set out in this manual, Part 1, Section 13, entitled "Disciplinary Matters."

#### **1-5 PAROLE OR PROBATION OFFICERS**

Employees may not act as parole or probation officers.

#### **1-6 LAW ENFORCEMENT ORGANIZATIONS**

Employees may serve as officers of law enforcement organizations only when to do so would in no way affect the conduct of official duties or present a situation wherein a conflict of interest or a lessening of Bureau efficiency would result. Should such occur, the situation must be resolved in favor of terminating the officership. In all cases, prior FBIHQ approval must be requested, accompanied by SAC analysis and recommendations. It is permissible to serve on a committee of a law enforcement organization.

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## **1-7 LAW ENFORCEMENT SELECTION BOARDS**

FBI employees will not serve on any promotional or selection boards or committees considering local, county, or state law enforcement personnel.

## **1-8 LABOR ORGANIZATIONS**

The Bureau is exempted from Federal Labor-Management Relations programs and requirements by Executive Order 11491 and will not recognize, or negotiate with, labor organizations. Labor organizations are defined as those which exist, in whole or in part, for the purpose of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees. Bureau employees are prohibited from engaging in labor activities such as, but not limited to, strikes, picketing, organizing and campaigning. Additionally, they must not use Government time or property for such purposes nor permit the use of same by others.

## **1-9 PARTICIPATION IN NONFEDERAL ENTITIES (See MAOP, Part 1, 1-16, 1-18.1 (1)(i) and (k), 1-26, 20-6.2, 20-6.3; Part 2, 5-4.1.)**

FBI employees who wish to participate in nonfederal organizations, whether in their personal capacities or as part of their official duties, must comply with applicable provisions of sections 1-9.1 or 1-9.2. In no case, however, may an employee acquire an interest in or be active on behalf of a group if that interest or activity conflicts with his or her duties to the federal government. In addition, employees must conform to Bureau policy regarding outside employment. (Provisions regarding outside employment are found in MAOP, Part 1, 20-6 through 20-6.3.2.) Additional limitations apply to personal-capacity participation in certain political organizations. (See MAOP, Part 1, 1-18.)

### **1-9.1 Personal-Capacity Participation (See 1-9.)**

(1) GENERAL. In personal-capacity participation, employees make a personal choice to undertake the activity rather than being assigned to perform the activity by a supervisor as part of their official duties. The FBI does not control or direct employees in outside activities undertaken in a personal capacity. Employees should ensure that their actions and positions taken while participating in these activities are recognized as their own, and not those of the FBI or DOJ. All employees must be aware of the provisions of Sections 203 and 205 of Title 18, United States Code, which prohibit executive branch employees from representing an outside organization before or to any department or agency of the U.S. government. (Organizations whose membership is composed of a majority of federal employees or their family members are not subject to this prohibition.) Employees must also remember that, when performing their FBI duties, they are prohibited from taking any official action that would affect the financial interests of an organization which they serve as officer, director, trustee, general partner, or employee. See Section 208 of Title 18, United States Code, and

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5 CFR Subparts D (Conflicting Financial Interests) and E (Impartiality in Performing Official Duties).

(2) LIMITATION ON THE SCOPE OF THIS SECTION. This section does not apply to participation in PRO BONO activities. Although the standards for participation in PRO BONO activities are the same as for other outside activities, DOJ has issued more specific guidance for PRO BONO legal services and similar volunteer work. The guidance has been uploaded in ACS as file 66F-HQ-1201415-C Serial 636.

(3) WHEN APPROVAL IS REQUIRED

(a) Employees do not need approval (beyond that required for outside employment) for personal-capacity participation in organizations whose work is not related to the work of the FBI.

(b) Even if an organization's work is related to the work of the FBI, employees do not need FBI approval (beyond that required for outside employment) for personal-capacity participation which will not extend beyond simple membership, i.e., does not involve the management or operation of the organization. Simple membership includes service as a committee member, but not as a committee chair, co-chair, or vice-chair.

(c) If an organization's work is related to the work of the FBI, employees must obtain prior FBI approval if personal-capacity participation will extend beyond simple membership. Participation beyond simple membership includes service as an officer, director, committee chair, co-chair, or vice-chair, or other similar managerial position, or which is accompanied by a fiduciary duty.

(4) SEEKING FBI APPROVAL. Employees shall forward requests for approval via their supervisory chain to their approval authority. Requests shall include: the organization's name; a summary of its goals and objectives and how its work is related to the FBI; a description of its membership or constituency; the title, managerial authority, voting powers, and responsibilities of the position in question; and a certification that an indices check reveals no reason to suggest that official FBI participation would pose a conflict of interests or that participation should be disapproved.

(5) FBI APPROVAL. Authority for approving these requests lies with an employee's SAC, ADIC, or Assistant Director (AD), as appropriate (subject to any supplemental guidance from the concerned FBIHQ AD). This approval authority may not be delegated below ASAC or Section Chief. The approval authority will review such requests and may approve them if he or she determines, with the concurrence of the Chief Division Counsel (CDC) for field divisions or Chief, Administrative Law Unit for FBIHQ divisions, that participation does not conflict with the faithful performance of the employee's FBI duties (and that any applicable outside employment requirements have also been met).

(6) USE OF GOVERNMENT RESOURCES. Ordinarily, personal activities on behalf of outside organizations should not be conducted at the expense of the government in terms of time or money. DOJ generally permits a limited use of office and library equipment and facilities for outside activities so long as the cost to the government is negligible. These resources may not be used in a manner that suggests that the FBI or DOJ endorses the activity, nor may they be used for outside activities in a way that interferes with official business. And, employees may not task subordinate

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staff to assist them in their personal-capacity outside activities. Managers may continue to authorize administrative time for certain outside activities where there is a benefit to the FBI, in accordance with the FBI's rules applicable to administrative time.

### **1-9.2 Official-Capacity Participation (See 1-9.)**

(1) GENERAL. In official-capacity participation, FBI/DOJ management assigns an employee to participate in a nonfederal organization as part of the employee's official duties, under the direction of an appropriate supervisor. All official-capacity participation requires prior approval. As detailed below, approval authority varies based on the degree of the involvement in the organization.

(2) LIMITATION ON THE SCOPE OF THIS SECTION. This section does not apply to participating in an organization in a personal capacity or appearing in one's official capacity as a speaker, panelist, or other participant in a seminar, convention, or other particular event. Provisions regarding public speaking are found in MAOP, Part 2, 5-4, and MAOP, Part 1, 1-16.2 and 1-26 through 1-26.5.

#### **(3) OFFICIAL-CAPACITY PARTICIPATION THAT IS LIMITED TO PASSIVE MEMBERSHIP**

(a) What is Passive Membership? Passive membership encompasses serving as FBI observer of the organization's activities and exercising the privileges of a member individually. It does not include serving as a representative of the FBI or DOJ to the organization.

(b) Who Approves Passive Membership? For official-capacity participation that does not extend beyond passive membership, the appropriate approval authority is the employee's SAC, ADIC, or AD, as appropriate (subject to any supplemental guidance from the concerned FBIHQ AD). ADs may delegate approval authority, but not below the level of Section Chief. Otherwise, this authority may not be delegated.

(c) Requesting Approval. Employees shall forward requests for approval via their supervisory chain to their approval authority. Requests shall include: the organization's name; a summary of its goals and objectives and how its work is related to the FBI; a description of how the FBI will benefit by participating officially in the organization; a description of its membership or constituency; the title, managerial authority, voting powers, and responsibilities of the position in question; and a certification that an indices check reveals no reason to suggest that official FBI participation would pose a conflict of interests or that participation should be declined.

(d) Approving Requests. The approval authority will review such requests and may approve them if he or she determines that the participation will only constitute passive membership and is necessary and proper for the accomplishment of the FBI's mission. Before acting on a request, the approval authority shall seek legal review from the CDC (field divisions) or Chief, Administrative Law Unit (ALU) (FBIHQ divisions). Correspondence approving official participation shall include an express reminder as to the very limited degree of involvement in the organization inherent in the approval.

#### **(4) OFFICIAL-CAPACITY PARTICIPATION THAT EXCEEDS PASSIVE MEMBERSHIP**

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(a) What is Official-Capacity Participation Beyond Passive Membership? Participation that is specifically within this category includes, but is not limited to, serving: as an officer, director, or similar managerial position; in a position that is accompanied by a fiduciary duty; or as a representative of the FBI or DOJ to the organization.

(b) Who Approves Official-Capacity Participation Beyond Passive Membership? The Deputy Attorney General (DAG) is the approval authority.

(c) Requesting Approval of Participation Beyond Passive Membership. Employees shall forward requests for approval to the DAG via: 1) their own SAC/ADIC/AD, 2) the concerned FBIHQ AD (i.e., the FBIHQ division with the greatest interest in the programs, objectives, or policies of the organization), and 3) the FBI Deputy Designated Agency Ethics Official (DDAEO) in OGC. Requests shall include: the organization's name; a summary of its goals and objectives and how its work is related to the FBI (DOJ considers that authorizing official-capacity participation where the outside organization's work is unrelated to FBI's mission and responsibilities would mistakenly convey FBI/DOJ endorsement of the organization's activities); a description of its membership or constituency; the title, managerial authority, voting powers, and responsibilities of the position in question; a description of the nature and extent of any fiduciary duty associated with service in the position, and a copy of or citation to any state laws that impose or describe the duty; a description of how the FBI will benefit by participating officially in the organization; a copy of the organization's charter and by-laws, if reasonably available; and a certification that an indices check reveals no reason to suggest that official FBI participation would pose a conflict of interests or that participation should be declined.

(d) Approving Requests

1. Basis for Approval. Approval may only be given when the FBI and DOJ have a clear interest in having an employee represent their interests, and the employee in question is an appropriate one to do so. The views articulated by officials serving in outside organizations as part of official duties must reflect the views of the whole DOJ, not just that of the FBI. These officials also must recognize situations when DOJ should take no position because DOJ has no interest in the matter or when it will always be inappropriate for DOJ to express an official position, such as matters involving the internal operation of an organization. DOJ coordination of official positions is necessary to achieve these results and, therefore, officials serving in this capacity should seek guidance from the supervisor assigned by the DAG to coordinate DOJ's positions.

2. Action by Head of Office. The supervising SAC/ADIC/AD will review each request, ensure it is complete, and may either disapprove it or forward the request along with his or her comments and recommendations to the AD of the concerned FBIHQ division (i.e., the FBIHQ division with the greatest interest in the programs, objectives, or policies of the organization).

3. Action by Concerned FBIHQ AD. The concerned FBIHQ AD shall review each request to determine whether the FBI has a clear interest in having an employee represent the DOJ's interests, whether the candidate employee is fully qualified to represent the FBI and DOJ officially in or before the organization, and whether the participation would conflict with the faithful performance of the employee's duties. If the concerned AD determines that the request should not be approved, he or she may disapprove the request and take any additional action deemed appropriate. If the

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concerned AD recommends that the request be approved, he or she shall forward the request to the Deputy Designated Agency Ethics Official for the FBI (DDAEO)(c/o OGC/ALU), along with the AD's determinations and any policy guidance he or she believes necessary to ensure that the candidate carries out the duties of the office in accordance with the understanding on which the approval is based.

4. Action by DDAEO. The DDAEO shall review the request for legal sufficiency and may effect such further coordination as warranted. If the DDAEO determines that the request is legally objectionable or otherwise inappropriate, he or she may deny the request and take any additional action deemed appropriate. If the DDAEO determines that the request is legally sufficient and appropriate, he or she shall forward the request to the DAG.

(5) USE OF GOVERNMENT RESOURCES. When employees serve an outside organization as part of their official duties, some government expense and use of subordinate employees' time is permissible, subject to supervisory discretion. However, in general the FBI does not authorize use of FBI resources to support the internal administration of an outside organization. The following use of resources may be authorized for employees serving an outside organization as part of their official duties: official time to prepare materials related to the activities; appropriated funds for travel to meetings; and the time of a subordinate in preparing material for meetings and other activities.

#### **1-10 DELETED**

#### **1-11 NON-FBI SEMINARS OR CLASSES**

Prior FBIHQ approval is needed for an employee to attend, serve as an instructor, or assist in conducting seminars, classes, or similar gatherings where the employee's FBI affiliation is known with the exception of attendance as a student at a college, law school, school of accounting or other recognized institution of learning. This rule applies to all nonduty time, including leave, and in any case in which a question arises as to the desirability of such participation.

#### **1-12 GRATUITIES AND REWARDS (See MAOP, Part I, 1-14 and 1-24.)**

(1) Employees may not accept rewards or gratuities resulting from their FBI employment nor shall they accept fees from an outside source on account of public appearances, speeches, lectures, or publications, if such public appearance or the preparation of the speech, lecture, or publication was part of an employee's official duties. Also, no employee shall receive compensation or anything of monetary value for any consultation, lecture, teaching, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information. Further, in this regard, no employee shall engage, with or without compensation, in teaching, lecturing, or writing that is dependent on information obtained as a result of government employment except when that information has been made available to the general public or when the Attorney General gives written authorization for the use of nonpublic information on the basis that such use is in the public interest. However, an employee injured during a kidnapping, assault or assassination attempt against the President, Vice-President or a

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Member of Congress may receive contributions or payments from a tax- exempt charitable organization.

(2) Bureau officials or other employees who speak or otherwise represent the FBI at conferences, training sessions, banquets, meetings and similar affairs given by outside groups are in official duty status when making such appearances and are entitled to claim payment through the Bureau for travel, subsistence, or other reimbursable expenses incurred. Only under limited circumstances will approval be granted to accept reimbursement of travel expenses from a nonfederal source. Unless prior approval has been obtained from appropriate FBIHQ officials authorizing the acceptance of travel reimbursement from a nonfederal source, any payment offered by the sponsoring group as reimbursement for such expenses **MUST** be declined. (See MAOP, Part II, 6-1.7.)

**1-13 GIFTS (See MAOP, Part I, 1-14; Legal Attache Manual, 2-23.)**

**1-13.1 Gifts Between Employees (See MAOP, Part I, 1-13.2.1(5) & 1-14.)**

**(1) GENERAL STANDARDS**

(a) **GIFTS TO SUPERIORS:** Except as provided below, an employee may not directly, or indirectly, give a gift to, or make a donation toward a gift for an official superior OR solicit a contribution from another employee for a gift to either his/her own or the other employee's official superior.

For purposes of this section, an official superior is not just an employee's immediate supervisor, but any other employee whose official duties include directing or evaluating either the performance of the employee's official duties or the performance of any other official superior of the employee.

(b) **GIFTS FROM EMPLOYEES RECEIVING LESS PAY:** Except as provided below, an employee may not, directly, or indirectly, accept a gift from an employee receiving less pay unless the two employees are **NOT** in a subordinate/official superior relationship, and there is a personal relationship between the two employees which would justify the gift.

**(2) EXCEPTIONS**

(a) **GENERAL EXCEPTIONS:** On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

1. Items, other than cash, with an aggregate market value of \$10 or less per occasion;
2. Items such as food and refreshments to be shared in the office;
3. Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
4. Items given in connection with the receipt of personal hospitality if similar in type and value customarily given on such occasions; and,
5. Leave transferred to an employee who is not an immediate supervisor.

(b) **SPECIAL INFREQUENT OCCASIONS:** A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

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1. In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child;
2. Upon occasions that terminate a subordinate/official superior relationship, such as retirement, resignation, or transfer.

(c) **VOLUNTARY CONTRIBUTIONS:** An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

1. On a special infrequent occasion such as described above; or
2. On an occasional basis, for items such as food and refreshments to be shared in the office.

An employee may accept gifts of this nature to which a subordinate or other employee receiving less pay than himself/herself has contributed.

**1-13.2 Gifts From Outside Sources (See MAOP, Part I, 1-14.)**

**1-13.2.1 General Standards (See MAOP, Part I, 1-14.)**

(1) **GENERAL PROHIBITIONS:** An employee shall not, directly or indirectly, solicit, coerce or accept a gift:

- (a) From a prohibited source;
- (b) Given because of the employee's official position;
- (c) In return for being influenced in the performance of an official act;
- (d) From the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his/her public office for private gain;
- (e) In violation of any statute. Relevant statutes applicable to all employees include:

1. Title 18, USC, Section 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his/her official duty. As used in Title 18, USC, Section 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials;
2. Title 18, USC, Section 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; and
3. Title 41, USC, Section 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a federal

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agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104; or

(f) Vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government.

(2) DEFINITIONS OF TERMS: GIFT includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(a) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(b) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(c) Loans from banks and other financial institutions on terms generally available to the public;

(d) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(e) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his/her official duties;

(f) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(g) Anything which is paid for by the Government or secured by the Government under Government contract;

(h) Any gift accepted by the Government under specific statutory authority, including:

1. Travel, subsistence, and related expenses accepted by an agency under the authority of Title 31, USC, Section 1353 in connection with an employee's attendance at a meeting or similar function relating to his/her official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41, CFR, Part 304-1; and

2. Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(i) Anything for which market value is paid by the employee.

(3) MARKET VALUE means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

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(4) PROHIBITED SOURCE means any person who:

- (a) Is seeking official action by the employee's agency;
- (b) Does business or seeks to do business with the employee's agency;
- (c) Conducts activities regulated by the employee's agency;
- (d) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (e) Is an organization a majority of whose members are described as prohibited sources. (See MAOP, Part I, 16-10.1.)

(5) A GIFT IS SOLICITED OR ACCEPTED BECAUSE OF THE EMPLOYEE'S OFFICIAL POSITION if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held his/her position as a federal employee. Note: Gifts between employees are subject to the limitations set forth in MAOP, Part I, Section 1-13.1.

(6) A GIFT WHICH IS SOLICITED OR ACCEPTED INDIRECTLY INCLUDES A GIFT:

- (a) Given with the employee's knowledge and acquiescence to his/her parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or
- (b) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by 5 CFR 2635.205 (a)(2) of the Office of Government Ethics (OGE) standards of conduct or for payments made to charitable organizations in lieu of honoraria under 5 CFR 2636.204 of the OGE standards of conduct.

(7) VENDOR PROMOTIONAL TRAINING means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

#### **1-13.2.2 Exceptions (See MAOP, Part I, 1-14.)**

The prohibitions set forth in OGE standards of conduct do not apply to a gift accepted under the circumstances described in paragraphs (1) through (9) of this section and a gift accepted in accordance with one of those paragraphs will not be deemed to violate the principles set forth in 5 CFR 2635.101(b) of the OGE standards of conduct. EVEN THOUGH ACCEPTANCE OF A GIFT MAY BE PERMITTED BY ONE OF THE FOLLOWING EXCEPTIONS IT IS APPROPRIATE AND FREQUENTLY PRUDENT FOR AN EMPLOYEE TO DECLINE A GIFT OFFERED BY A PROHIBITED SOURCE OR BECAUSE OF HIS/HER OFFICIAL POSITION.

(1) Gifts of \$20 or less: an employee may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in

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order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

(2) Gifts based on a personal relationship: an employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

(3) Discounts and similar benefits. An employee may accept:

(a) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(b) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph 3. of this section:

1. Offered to members of a group or class in which membership is unrelated to Government employment;
2. Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or
3. Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that--

An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds. (See (b).)

(4) Awards and honorary degrees:

(a) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

1. Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and
2. Under which selection of award recipients is made pursuant to written standards.

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(b) An employee may accept an honorary degree from an institution of higher education as defined at Title 20, USC, Section 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(c) An employee who may accept an award or honorary degree pursuant to this section may also accept meals and entertainment given to him/her and to members of his/her family at the event at which the presentation takes place.

(5) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(a) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

(b) Resulting from the employee's outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's official status; or

(c) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of MAOP, Part I, Section 1-16.1(3) (a) - (c) which is applicable when seeking employment.

(d) For purposes of paragraphs (5) (a) through (c) of this section, employment includes any form of nonfederal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to federal employment. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

(6) Widely attended gatherings and other events:

(a) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his/her acceptance of an offer of free attendance at the event on the day of his/her presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his/her performance of the assignment and does not involve a gift to him/her or to the agency. (See (d) and (f).)

(b) Widely attended gatherings. When there has been a determination that his/her attendance is in the "interest of the agency" because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account. (See (d) and (f).)

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(c) Determination of "agency interest." The determination of "agency interest" required by paragraph (6)(b) of this section shall be made orally or in writing by the agency designee.

1. If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties, or an association or organization, the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his/her official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

2. A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom a finding is required by paragraph (c)1. above. Where a finding under paragraph (c)1. above is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the sponsor or its members.

(d) Free attendance. For purposes of paragraphs (6) (a) and (b) above, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

(e) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(f) Accompanying spouse. When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (6) (a) or (b) above. The authorization required by this paragraph may be provided orally or in writing.

(7) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

(a) The invitation is from a person who is not a prohibited source; and

(b) No fee is charged to any person in attendance.

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(8) Meals, refreshments and entertainment in foreign areas: an employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(a) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402;

(b) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(c) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise furthers programs or operations of the agency or the U.S. mission in the foreign area; and

(d) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in Title 5, USC, Section 7342(a)(2).

(9) Gifts accepted under specific statutory authority.

The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(a) Free attendance, course or meeting materials, transportation, lodgings, food and refreshment or reimbursements therefore incident to training or meetings when accepted by the employee under the authority of Title 5, USC, Section 4111 from an organization with tax-exempt status under Title 26, USC, Section 501(c) (3) or from a person to whom the prohibitions in Title 18, USC, Section 209 do not apply. The employee's acceptance must be approved by the agency in accordance with Section 410.701 through Section 410.706 of Title 5, CFR; or

(b) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, Title 5, USC, Section 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act. Refer to MAOP, Part I, Section 1-13.3.1.

**1-13.2.3 Proper Disposition of Prohibited Gifts (See MAOP, Part 1, 1-13.3, 1-13.3.1, and 1-14.)**

(1) An employee who has received a gift that cannot be accepted shall:

(a) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality.

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(b) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

(c) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

(d) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR Part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(2) An agency may authorize disposition or return of gifts at government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(3) An employee who, on his/her own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults an FBI ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his/her own initiative.

#### **1-13.2.4 Request for Gift Acceptance**

(1) The Attorney General has gift acceptance authority pursuant to Title 28, U.S. Code, Section 524, and has delegated that authority to the Assistant Attorney General for Administration (AAG/A) in DOJ Order 2400.2. The AAG/A has redelegated this authority to the Director when the gift is valued at no more than \$150 per donor per calendar year. The Director has further redelegated this authority to the Chief, Property Procurement and Management Section (PPMS), Finance Division. The FBI's Deputy Designated Agency Ethics Official must concur with the PPMS Chief for the gift to be accepted. Except as indicated below, these two officials may accept any form of devise, bequest, gift, or donation of property that is appropriate for use or display in the component and is valued at \$150 or less per donor per calendar year.

(2) Gifts valued at more than \$150, gifts of services, and gifts from DOJ employees may not be accepted by FBI officials, but must instead be processed by the PPMS for DOJ consideration. Gifts from DOJ employees are rarely accepted by DOJ.

(3) When an individual or group advises an FBI employee of the intent to donate a gift, that FBI employee must evaluate, or obtain from other appropriate employees in that office an evaluation of, the suitability of the proposed gift for use or display either at that office or elsewhere within the Bureau. Gifts of limited value to the FBI due to maintenance requirements, general condition, restrictions placed on their use, or other factors should be refused or discouraged.

(4) In order to process a gift, the office to which the gift is offered should submit the DOJ Gift Donation Form, signed by the gift's donor, along with information clearly demonstrating the utility of the gift to the FBI and any other pertinent information, to the PPMS. In the unusual circumstance that the donor is unavailable to sign the Gift Donation Form, a gift of more than \$150 may be processed through completion of the Gift Donation Form by the head of the division to which the gift was offered, or a delegate, indicating on the form the circumstances under which the gift was

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offered. If the gift is valued at \$150 or less and the donor is unavailable to sign a Gift Donation Form, the recipient division's head or a delegate may complete a Gift Acceptance Form. Both forms can be obtained from the PPMS. Completed forms should be forwarded to PPMS for further processing.

(5) If the PPMS confirms that a gift of more than \$150 is appropriate for use or display either at the office to which it was offered or elsewhere in the Bureau, the PPMS will prepare a cover letter seeking DOJ acceptance of the gift. This cover letter will communicate the basis for the PPMS's determination that the gift would be appropriate for use or display by the FBI and enclose the Gift Donation Form. The PPMS will seek concurrence from OGC before forwarding the cover letter and Gift Donation Form to the AAG/A for

DOJ approval. If the PPMS confirms that a gift of \$150 or less is appropriate for use or display, the PPMS will seek OGC concurrence and, if OGC concurs, accept the gift.

(6) FBI components may not, as a general rule, accept custody of gifts pending decision regarding gift acceptance by the appropriate officials. If, however, a donor insists that the FBI take immediate custody of a proffered gift, the concerned component may do so ONLY if the potential donor agrees in writing to hold the FBI blameless for any damage to the property suffered while it is in FBI custody and to remove the property promptly without cost to the FBI if the gift is ultimately declined. Property taken in temporary FBI custody under this authority shall be safeguarded in the same manner as comparable government property but shall not be used for any purpose.

**1-13.3 Receipts of Foreign Gifts and Decorations (See MAOP, Part 1, 1-13.2.3, 1-14; Legal Attache Manual, 2-23.)**

(1) Gifts and decorations received from foreign governments fall within one of two categories depending upon the appraised value of the gift. If the appraised value of the gift is less than "minimal" value, as determined by the consumer price index set forth by Congress, with the exception of firearms, it may be retained by the receipt for personal use or as a souvenir provided that all reporting requirements are satisfied. Foreign gifts and decorations of more than minimal value (contact the Property Management Unit (PMU), Property Procurement and Management Section (PPMS), Finance Division (FD), to determine the current minimal value) may be retained and placed into official use (i.e., displayed in reception areas) after the Supply Technician has placed the item(s) on the Property Management Application. All gifts over the minimal value that are not retained shall be declared as excess to the General Services Administration (GSA) and later sold. This declaration will be made by FBIHQ. If the original recipient desires to participate in the sale of the property by GSA, FBIHQ should be advised at the time the gift is reported so that appropriate action can be taken.

(2) In addition to tangible gifts, all foreign gifts of travel or expenses for travel taking place entirely outside the United States should be reported where the acceptance of which has not been authorized in accordance with specific instructions of FBIHQ. (See MAOP, Part 2, 6-1.7 through 6-1.7.4.)

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**1-13.3.1 Reporting Requirements (See MAOP, Part 1, 1-13.2.2 (9)(b), 1-13.2.3, 1-14 & Legal Attache Manual, 2-23.)**

All gifts or decorations, valued at greater than \$285, received from foreign individuals and all gifts valued at more than the minimal value GIVEN to foreign individuals by employees acting in an official capacity should be reported within 15 days of the property's receipt or presentation. The report should be submitted to FBIHQ, Attention: PMU, PPMS, FD, by electronic communication as appropriate. A separate statement containing the following information should be submitted for each gift received or presentation made.

(1) For tangible gifts:

- (a) Name and title of recipient.
- (b) Gift, date of acceptance, estimated value, and current disposition or location.
- (c) Identity of foreign donor and government.
- (d) Circumstances justifying acceptance.

(2) For travel or expenses for travel:

- (a) Name and title of recipient.
- (b) Brief description of travel or travel expenses occurring entirely outside the United States.
- (c) Identity of foreign donor and government.
- (d) Circumstances justifying acceptance.

(3) For each gift to a foreign individual:

- (a) Identity of individual receiving gift.
- (b) Description of gift.
- (c) Value of gift.
- (d) Type of funds used for gift (appropriated or nonappropriated).
- (e) Date gift presented.
- (f) Name of individual presenting gifts.

**1-14 MONETARY MATTERS AND FINANCIAL DEALINGS (See MAOP, Part I, 1-12, 1-13 through 1-13.3.1; Part II, 6-5; MIOG, Part I, 211-9.)**

- (1) An employee who is an official superior may not borrow money from or give or receive endorsements of promissory notes of other employees working under him/her or of lesser rank.
- (2) All employees must meet their financial obligations and, in addition, are expected to abide by the laws of the United States and of the several states with respect to filing proper tax statements. Any controversy arising with taxing authorities must be brought to the attention of FBIHQ immediately. Although employees will not be required to pay unjustified claims, these matters should be resolved with reasonable promptness. In this respect, it should be noted that the U.S.

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Internal Revenue Service may attach salaries of federal employees who refuse to pay delinquent taxes.

(3) Failure on the part of an employee without good reason and in proper and timely manner to honor debts acknowledged by employee to be valid or reduced to judgment by a court or to make or adhere to satisfactory arrangements for settlement thereof may be cause for disciplinary action.

(4) USE OF PUBLIC OFFICE FOR PRIVATE GAIN - An employee shall not use his/her public office for his/her own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (b) through (e) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Performance of official duties affecting a private interest. To ensure that the performance of his/her official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he/she is affiliated in a nongovernmental capacity shall comply with any applicable requirements of 5 CFR 2635.502.

(b) An employee shall not use or permit the use of his/her government position or title or any authority associated with his/her public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself/herself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

(c) Except as otherwise provided by the OGE standards of conduct, an employee shall not use or permit the use of his/her government position or title or any authority associated with his/her public office in a manner that could reasonably be construed to imply that his/her agency or the government sanctions or endorses his/her personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he/she may refer to his/her official title or position only as permitted in MAOP, Part I, 1-16.2. He/She may sign a letter of recommendation using his/her official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he/she has dealt in the course of federal employment or whom he/she is recommending for federal employment. (See MAOP, Part I, 1-15.3.)

(d) An employee shall not use or permit the use of his/her government position or title or any authority associated with his/her public office to endorse any product, service or enterprise except:

1. In furtherance of statutory authority to promote products, services or enterprises; or
2. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

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(e) Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable," "Doctor" or a former military rank, from using that term of address or rank in connection with a personal activity.

(5) No employee shall use, for the financial gain of the employee or another person, or make any other improper use of, whether by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, information which comes to the employee by reason of his/her status as an employee and which has not become part of the body of public information. (See MAOP, Part I, 1-24.) Further, no employee shall make investments

(a) in enterprises which, it is reasonable to believe, will be involved in decisions to be made by the employee,

(b) on the basis of information which comes to notice as the result of the employee's status and which has not become part of the body of public information, or

(c) which are reasonably likely to create any conflict in the proper discharge of the employee's official duties.

(6) No employee shall accept free transportation for official or unofficial purposes when the offer of such transportation might reasonably be interpreted as an attempt to affect the employee's impartiality. (See MAOP, Part II, 6-1.7 through 6-1.7.4.) No employee shall solicit or accept, for the employee or any other person, directly or indirectly, any gift, favor, entertainment, loan or any other thing of monetary value from a person who has or is seeking contractual or other business or financial relations with the Department, is engaged either as a principal or attorney in proceedings before the Department or in court proceedings in which the United States is an adverse party, or has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. This prohibition does not, however, prevent:

(a) solicitation or acceptance of anything from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the motivation is a personal or family relationship;

(b) acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meetings;

(c) acceptance of loans from financial institutions on customary terms for normal and ordinary activities such as home mortgage loans;

(d) receipt of genuine reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence for which no government reimbursement is made and provided the reimbursement is not excessive and employee is not traveling on official business under Bureau orders;

(e) acceptance of an award for a meritorious public contribution or achievement.

(7) Employees traveling on official business by means of public carriers, and who receive promotional items or property as a result of having purchased tickets are required to relinquish such promotional property to the SAC or other appropriate FBI official. This complies with Treasury Bulletin No. 79-09 which states, "When employees travel on official business all items given

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beyond the terms of contractual arrangements between the government and public carriers become the property of the government." (See MAOP, Part II, 6-1.1.3.)

(8) PUBLIC FINANCIAL DISCLOSURE REPORTS (SF-278) FILING REQUIREMENTS:

(a) Public Financial Disclosure Reports must be filed by:

1. Presidential nominees to positions requiring the advice and consent of the Senate.
2. Officers and employees whose positions are classified above GS-15 (SENIOR EXECUTIVE SERVICE (SES)) of the General Schedule, or whose rate of basic pay which is fixed under pay schedules at a rate equal to or greater than 120 percent of the minimum rate of basic pay fixed for a GS-15 of the General Schedule.

(b) When to file SF-278:

1. Within 30 days after assuming a designated position, unless the individual has left another position, for which an SF-278 was required to be filed or has already filed a report as a nominee or candidate for position.
2. No later than May 15th annually.
3. Upon termination of a designated position, within 30 days. However, if within 30 days of the termination the individual assumes employment in another position or office for which a public report is required to be filed, no report shall be required.

(c) Extensions:

1. Requests for extension must be made in writing to the Office of the General Counsel (OGC) to allow for sufficient time for coordination/referral to the Deputy Designated Agency Ethics Official (DDAEO).

(d) Late filing fee:

1. A \$200 late filing fee will become due at the time of filing if a financial disclosure report is filed more than 30 days after the required date or the last day of any approved filing extension. Waivers to the late fee may only be obtained from the Director, Office of Government Ethics. A request for waiver of the late fee must be initiated by the filer in writing, justifying why a waiver should be granted and submitted with supporting documentation. The request for a waiver should be submitted to the DDAEO through the Administrative Law Unit (ALU), OGC.

(e) Failure to file or falsifying reports:

1. Failure to file or the filing of false information could result in criminal and administrative action and civil penalties of up to \$10,000. (See (11) (c).)

(f) Where to file SF-278:

1. Completed SF-278s are to be signed and dated by the filer and forwarded to his or her immediate supervisor (i.e., rating official), who upon receipt should date-stamp the form to certify compliance with the reporting requirements. After the supervisor conducts the initial review, the form should then be forwarded to OGC for final processing and review by the DDAEO.

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(g) Where SF-278s are maintained:

1. All completed SF-278s are maintained by the ALU, OGC.
2. Forms are to be maintained for a minimum of six years and thereafter may be destroyed.
3. Inspection by the public is permitted by any person who makes written application. Requests for a copy of the report will be honored. It is unlawful for any person to obtain or use a public report for:
  - a. any unlawful purpose;
  - b. any commercial purpose, other than by news and communications media for dissemination to the general public;
  - c. for determining or establishing the credit rating of any individual; or
  - d. use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(9) RESOLUTION OF QUESTIONABLE SF-278s:

Should the immediate supervisor (IS), ALU, and/or the DDAEO determine that an actual or apparent financial conflict of interest exists, additional information may be requested from the filer to assist in taking appropriate action to resolve the conflict. Actions that may be taken to resolve the conflict include: divestiture of the financial interest; recusal from the matter; procurement of a waiver pursuant to Title 18, United States Code (USC), Section 208(b); or the establishment of a qualified trust as permitted by Title 5, Code of Federal Regulations (CFR), Section 2634.401 ET SEQ. for the financial interest.

**(10) CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE-450) FILING REQUIREMENTS:**

(a) Employees at grades GS-15 and below must file a Confidential Financial Disclosure Report if their duties require them to exercise significant judgment on behalf of the government:

1. Regarding contracting or procurement;
2. Regarding the administration or monitoring of grants, subsidies, licenses or other benefits;
3. As a special government employee serving with or without compensation; or
4. Resulting in a final decision or action which will directly and substantially affect the economic interests of any nonfederal entity.

(b) FBIHQ has determined that the following categories of employees must file the OGE-450 according to the criteria above:

**1. FBIHQ PERSONNEL REQUIRED TO FILE:**

- a. All GS-15 personnel (including those assigned to Legal Attaches, detail assignments, etc.) who are supervisors or whose duties meet the criteria set forth in (10)(a) above;
- b. All procurement and contracting officials;

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- c. All Unit Chiefs, regardless of their grade; and
- d. All Government Purchase Card holders assigned to the Finance Division regardless of their grade.

**2. FIELD DIVISION PERSONNEL REQUIRED TO FILE:**

- a. All Assistant Special Agents in Charge (ASACs) who are non-SES and all Supervisory Special Agents;
- b. All Administrative Officers (AOs), Office Services Managers (OSMs), Office Managers (OM) and/or appropriately designated assistants such as Supervisory Administrative Specialists (SAS), Assistant Office Services Managers (AOSM), etc.;
- c. All procurement and contracting officials;
- d. Employees acting in a covered position for more than 60 days;
- e. All Chief Division Counsels at the GS-14 level; and
- f. Deleted

**(c) When to file the OGE-450:**

- 1. Annually by October 31 for the 12 months ending September 30;
- 2. New entrants into covered positions within 30 days of assuming the position unless they have previously satisfied the reporting requirements in another covered position or filed a report in consideration for appointment to the position;
- 3. Whenever an employee is acting in a position for more than 60 days in a 12-month period ending September 30;

**(d) OGE-450 reviewing requirements:**

1. Initial review to be conducted by an IS within 30 days. The IS should have first-hand knowledge of the assignments of the employee to ensure that no potential financial conflicts of interest are present. Consequently, the IS shall be the same individual who acts as the rating official for the employee's annual performance appraisal. The IS will date-stamp the OGE-450 upon receipt, to certify compliance with established deadlines and is to ensure designated employees annually submit a completed OGE-450 by the established deadline, or a Conflict of Interest Certification (CIC) whenever such is required, and sign the form.

2. Secondary review is to be performed by the individual designated by the headquarters division head as being the

Final Reviewer (FR). In the field, the FR is the field office's Chief Division Counsel (CDC), except for the CDC's report, which will be reviewed in final by the SAC.

If the CDC reports directly to the SAC, the SAC will serve as the FR and there will be no initial review. In those offices with an Assistant Director in Charge (ADIC), the ADIC will serve as the FR.

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3. If a filer's interests did not change from last year, the filer may complete the top part of the first page of the form, sign and date it, write across Part I the words "SEE ATTACHED" and attach a copy of last year's certified report. The initial and secondary review can then be performed.

(11) CONFLICT OF INTEREST CERTIFICATION (CIC), FILING IN LIEU OF THE OGE-450:

(a) The CIC is a one-page abbreviated version of the OGE-450 designed to ensure that the employee has no actual or apparent financial conflicts of interest. A CIC must be executed each time a project is assigned or reassigned to a Contracting Officer's Technical Representative (COTR). Supervisors, coordinators, contracting and procurement officials will be responsible for ensuring the required CIC filing is performed for projects under their responsibility. For the field and all FBIHQ division heads, these individuals are defined as:

1. Employees who occasionally serve as a COTR; which may include Special Agents and/or certain support employees such as Senior Electronics Technicians, Information Systems Analysts or Warehousepersons.

2. Employees acting in a covered position for more than 60 days.

(b) When to file the CIC:

1. Each time a project is assigned or reassigned to a COTR.

(c) Penalty for failure to file:

1. See (8) (e) above.

(d) CIC reviewing requirements:

1. CICs need only be reviewed by the IS who is the same individual who acts as the initial reviewer for the OGE-450. The IS should date-stamp the CIC upon receipt to certify compliance with established deadlines.

(12) DESIGNATION AND RESPONSIBILITY OF THE FINAL REVIEWER (FR):

(a) The designation of the FR rests with the division head or other designated entity. The FR shall review each OGE-450 within 30 days of its receipt from the IS to ensure it is complete and that no apparent or actual conflict of interest exists. Once the FR determines these requirements are met, he/she shall sign the OGE-450 (not necessary on the CIC) and maintain the form in accordance with the guidelines set forth in (14) below.

(13) RESOLUTION OF QUESTIONABLE OGE-450s:

(a) Should the IS and/or the FR determine that an actual or apparent financial conflict of interest exists, additional information may be requested from the filer to assist in taking appropriate action to resolve the conflict. Actions that may be taken to resolve the conflict include: divestiture of the financial interest; recusal from the matter; procurement of a waiver pursuant to Title 18, USC, Section 208(b); or the establishment of a qualified trust as permitted by Title 5, CFR, Section 2634.401 ET SEQ. for the financial interest. Should resolution prove difficult or further problems arise, the FR should forward the signed or unsigned report to the SAC or division head for further consideration.

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(b) Upon receipt of a questionable OGE-450 or CIC, the SAC or division head shall take whatever action is necessary to resolve the actual or apparent conflict to ensure compliance with the law. Conflicts which cannot be satisfactorily resolved should be brought to the attention of the ALU, OGC, for advice, guidance and resolution.

(14) MAINTENANCE OF OGE-450s AND CICS: (See (12) above and MAOP, Part I, 11-1.3; Part II, 2-4.5.10.)

(a) OGE-450s are to be maintained in folders titled "Confidential Financial Disclosure Reports" by the division's front office in date order. CICs will be maintained in a second folder titled "Confidential Financial Disclosure Reports/CICs," also in date order. These folders will be maintained in a secure manner, and every effort should be made to ensure their privacy. Both OGE-450s and CICs will be maintained for a period of six years, after which they must be destroyed, unless needed for an ongoing investigation.

(b) Should an employee transfer out of an office, his/her previously submitted OGE-450s and/or CICs should be transferred with the employee to his/her new assignment in a sealed envelope. In the event an employee terminates employment, previously submitted forms are to be placed in a sealed envelope and labeled with the employee's name and the words "CONFIDENTIAL FINANCIAL DISCLOSURE REPORTS AND/OR CONFLICT OF INTEREST CERTIFICATIONS." These envelopes should be dated, maintained by the employee's last duty station in a secure location for six years, and then destroyed, unless needed for an ongoing investigation.

(c) SACs and division heads shall be responsible for ensuring that any employee who falls within one of the categories detailed above files the appropriate report or certifications, and that the required documentation is properly maintained according to the guidelines set out above.

(15) NO PUBLIC ACCESSIBILITY

(a) OGE-450s are confidential. No member of the public can have access to such reports except pursuant to the order of Federal Court or as otherwise provided under the Privacy Act.

**1-14.1 Financial Relationships with Witnesses, Subjects, and Individuals Furnishing Information to the FBI (See Part 1, 137-7 (12).)**

(1) Because of the appearance of improper conduct or conflict of interest usually involved in such relationships as well as the high potential for actual impropriety inherent in such relationships, Bureau employees are prohibited from engaging in private business and financial relationships with subjects, witnesses, individuals furnishing information to the FBI (including informants), and counsel or other representatives of such persons without prior FBIHQ approval. This prohibition includes giving or receiving gifts, selling, purchasing, or exchanging property, making or receiving loans, and engaging in other transactions or business relationships in which some financial or tangible benefit is bestowed upon either the employee or third party.

(2) In seeking FBIHQ approval for an exception to this general prohibition, employees must be able to demonstrate that the proposed transaction or relationship will not create an appearance of impropriety, involve a conflict of interest, or otherwise reflect adversely upon the FBI.

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(3) Requests for exceptions should be directed to the the Office of the General Counsel and, for informant matters, the Assistant Director, Office of Intelligence.

**1-14.2 Restriction on Financial Involvement with Employees, Relatives, or Friends of Employees (See MAOP, Part 2, 6-11.)**

The FBI is prohibited from any type of financial involvement with its employees, relatives or friends of employees, business concerns or organizations owned or substantially owned or controlled by one or more employees, unless specifically approved by FBIHQ in advance. All such requests must be submitted in writing to the Office of the Chief Contracting Officer, Property Procurement and Management Section, Finance Division. The restriction on government agencies which prohibits financial involvement with its employees or relatives of employees is to avoid either actual or perceived conflicts of interest which may arise with respect to the government showing favoritism or preferential treatment toward its employees.

**1-15 ADMINISTRATIVE MATTERS**

**1-15.1 Promotions, Transfers, Administrative Action**

(1) Recommendations for the promotion of any employee shall come only from the official superior of the employee. This procedure shall be followed, too, concerning any recommendations tending to initiate, retard, or rescind any order or administrative action of the Bureau. Failure to abide by these regulations will result in severe administrative action as well as possible removal from the service. See 1-15.4 for further policy on personnel actions concerning relatives of Bureau managers.

(2) In connection with any pending, contemplated or recommended personnel action, such as promotions, reassignments, transfers, commendations, incentive awards, and disciplinary action, every precaution should be taken to ensure existing files and records are provided adequate security. Except for considering access to such records in response to a request submitted under the Privacy Act, disclosure of the existence of such contemplated action must be kept to a minimum. There should be no unnecessary discussions of the proposed action until a final decision is made by FBIHQ.

(3) In this regard, it should be understood by all employees that the matter of promotions, demotions, transfers, and any other similar, official personnel action must be decided solely on the merits of the individual case. The welfare of the Bureau must take precedence over desires and convenience of the employee involved, particularly with respect to transfers of investigative personnel who are expected to be available for service wherever the needs of the Bureau may require their assignment. Any attempt, either directly or indirectly, to bring outside influence to bear on the Bureau to promote, rescind, or alter official actions in any manner is contrary to the above-stated policy.

(4) In accordance with the provisions of the Privacy Act, the employee may request access to FBI records concerning his/her employment, including those compiled during the course of an internal administrative inquiry. To access his/her employment records, the employee should execute an FD-488, the Privacy Act Request Form. The Field Privacy Control Officer is responsible for ensuring prompt attention to each request. Requests must be processed without delay, and the employee

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provided with copies of whatever records are accessible to him/her under the law. The submission and processing of Privacy Act requests by employees should not be impeded by management personnel. (See MAOP, Part 1, 20-4.2.)

**1-15.2 Employee Arrests or Involvement with Police**

(1) Under no circumstances, except in an official capacity, should any SAC or other FBI personnel become involved in any matter directly or indirectly concerning an employee or nonemployee who has been arrested or is otherwise in difficulty with a law enforcement agency; nor should any Bureau employee attempt to mitigate the action of any arresting officer, agency, or prosecuting officer, or in any way try to minimize publicity concerning such incident. Any incidents of this nature must be reported immediately to FBIHQ as set out in this manual, Part I, Section 13 entitled "Disciplinary Matters."

(2) All employees are to report promptly to their supervisors any incident in which they are involved with law enforcement authorities.

**1-15.3 Testimonials and/or Personal Recommendations Regarding FBI Employees and Personal Acquaintances (See MAOP, Part I, 1-14, 20-15.3; II, 9-4.4 (2)(d).)**

(1) Except as authorized in subparagraph (2) below, FBI employees shall not provide oral or written testimonials, opinions, or letters of recommendation to non-FBI personnel regarding the official status or performance of current or former Bureau employees. "Official status or performance" includes such information as current or former positions or titles held in the Bureau, salaries, duty stations, evaluations, reasons for separation, and so forth. Persons making such inquiries should be advised that their questions should be addressed to: Personnel Verification and Records Subunit, Field Services Unit, Information Resources Division, FBIHQ, 935 Pennsylvania Avenue, Washington, D.C. 20535. (See MAOP, Part I, 20-15, regarding service record and credit inquiries.)

(2) FBI employees may, however --

(a) Sign a letter of recommendation regarding a current or former Bureau employee using their official titles and official stationery in response to a request for an employment recommendation or character reference based upon personal knowledge of the abilities or character of an individual with whom the writer has dealt in the course of federal employment or whom the writer is recommending for federal employment. All such recommendations must include a disclaimer that the information provided is based solely on PERSONAL KNOWLEDGE and should not be construed as the official views of the FBI. Persons seeking the OFFICIAL views of the FBI in such matters should be advised to direct their questions to: Personnel Verification and Records Subunit, Field Services Unit, Information Resources Division, FBIHQ, 935 Pennsylvania Avenue, Washington, D.C. 20535. (See MAOP, Part I, 20-15, regarding service record and credit inquiries.)

(b) Respond to inquiries from non-FBI personnel asking for their PERSONAL opinions about the nonofficial aspects or characteristics of current or former FBI employees. Such inquiries include questions about an individual's loyalty, character, habits, community reputation, and so forth. Responses must: be approved in advance by the declarant's SAC or division head; make no reference to official performance or status; not disclose information concerning or from any FBI

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investigation, inquiry, operation or file; reveal any confidential or sensitive information; disclose any information protected from disclosure by any law or regulation, including the Privacy Act; and include a disclaimer that all information provided is based solely on personal knowledge and should not be construed as the official views of the FBI. Official stationery may NOT be used in responding to such inquiries.

(3) Employees may, in regard to friends or acquaintances that are NOT former or present Bureau employees, furnish PERSONAL opinions based upon PERSONAL ASSOCIATION pertaining to loyalty, character, habits, conduct, reputation, etc., to individuals collecting information as part of a background investigation gathering information relating to suitability for employment or issuance of a security clearance. BUREAU STATIONERY MAY NOT BE USED TO PROVIDE WRITTEN COMMENTS.

(4) Any employee interviewed during the conduct of an employment or clearance background investigation conducted by the FBI may provide his/her PERSONAL opinions based on PERSONAL ASSOCIATION with the subject of the investigation, but must recuse himself/herself from participation in the conduct of that investigation to avoid the appearance of bias or partiality by the FBI. The employee must ask the interviewer to include in the report of the interview the fact that the views expressed are the employee's own. Field managers (Assistant Director in Charge, Deputy Assistant Director in Charge, SAC, ASAC or Supervisory Special Agent) must be interviewed at the conclusion of the investigation to avoid any concerns that the field manager's remarks could influence the outcome or direction of the investigation. (See MAOP, Part II, 10-17.11.2 (1).)

(5) In background investigations conducted by the FBI, Agents routinely select for interview representatives of the federal law enforcement community, from whom official observations are solicited. Agents are permitted to use their own discretion in selecting the interviewee but are encouraged to interview representatives outside the FBI. (See MIOG, Part I, 77-4.5.)

(6) Employees may not offer opinions or conclusions drawn from information gained from FBI or other agency investigations to those conducting background investigations.

(7) CAUTION: Information obtained solely from FBI or other agency records cannot be disclosed outside the FBI, except pursuant to established dissemination procedures.

**1-15.4 Nepotism (See MAOP, Part 1, 1-15.1 and 3-3.1.)**

(1) No Bureau managers shall advocate one of their relatives for appointment, employment, promotion, or advancement to a position in the FBI or any other component of the Department of Justice (DOJ).

(2) No Bureau managers shall appoint, employ, promote, or advance their relatives to any post within the FBI.

(3) No Bureau managers shall appoint, employ, promote, or advance the relatives of other Bureau or DOJ managers to any post within the FBI if those other managers have advocated the appointment, employment, promotion or advancement of their relatives for positions within the FBI.

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- (4) No Bureau managers, as either Rating or Reviewing Officials, shall appraise the performance of any of their relatives.
- (5) For the purpose of this section, Bureau managers who recommend relatives or refer relatives for consideration by a Bureau manager lower in the chain of command (i.e., the line of supervisory personnel that runs from position of Bureau manager to the Director) for appointment, employment, promotion or advancement are deemed to have advocated the appointment, employment, promotion or advancement of those relatives.
- (6) All Bureau managers whose assignments cause them to confront any of the circumstances described in paragraphs (1) through (4) must immediately contact their superiors to effect a prompt resolution of the matter. In this respect, the Administrative Services Division should be included in the resolution process.
- (7) The resolution of each appointment, employment, promotion, advancement or appraisal incident with nepotistic potential will be coordinated on a case-by-case basis by the respective SAC or division head with the Personnel Officer at FBI Headquarters. Once each situation is satisfactorily resolved, documentation of that resolution will be filed in the respective personnel files of the affected employees.
- (8) Failure to properly address a nepotism matter may cause a loss of pay to the individual appointed, employed, promoted or advanced in violation of law. Bureau managers who fail to address any personnel matters which contain potential for nepotism will be subjected to appropriate administrative action.
- (9) See MIOG, Part 1, 67-1.4, regarding FBI applicant matters affected by this policy.

**1-15.5 Employment Recommendations for Applicants by Members of Congress (See also MIOG, Part I, 67-7.12.)**

FBI officials concerned with examining or appointing an applicant may not receive or consider a recommendation from a Senator or Representative, except as to the character or residence of the applicant, unless the recommendation is based on the personal knowledge or records of the sender. In no case is the FBI required to return a letter to the sender, even if it does not meet the above requirement. All recommendation letters received from Members of Congress about Bureau applicants should be answered by the Chief Division Counsel in the field office or the appropriate applicant entity in the Personnel Division, i.e., the Bureau Support Applicant Unit or the Special Agent Applicant Unit. The following standard reply is to be used:

"This is to acknowledge receipt of your letter on behalf of (applicant's name), who has applied for a position with the Federal Bureau of Investigation (FBI).

"You may be assured that (applicant's name's) application will receive appropriate consideration for this position.

"We appreciate (applicant's name's) interest in employment with the FBI."

The following illustrates the types of recommendations that we may or may not consider. For example, we may consider the following recommendation from a Member of Congress since it relates only to the applicant's character and residence:

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"I have known Mary Smith, a resident of my State, to be a very fine person. She has always been reliable, and shown good judgment and integrity. She is very highly regarded in the community."

The following expanded recommendation may also be considered because it is based on personal knowledge:

"I recommend Mary Smith for the vacant policy analyst position because of her excellent performance while working in a similar capacity in my office for the past nine years. Mary has recently attended several training classes which make her even more qualified for the job."

If a recommendation is not based on the personal knowledge or records of the sender, then it should not discuss the qualifications of the applicant or assess the applicant's suitability for employment with the FBI or in a particular job. If it does, then we may not consider it.

**1-16 OUTSIDE EMPLOYMENT (See MAOP, Part 1, 1-18.1 (1)(i), (k), 1-24, 20-6, 20-28; MIOG, Part 1, 67-11 (1)(d).)**

Employees shall not engage in other work, employment, occupation, profession, business or partnership without receiving prior Bureau approval. This rule applies whether the outside employment is self-employment or employment by a third party. Any case of doubt should be referred to Bureau for decision. Furthermore, no employee, even though having Bureau approval to engage in part-time outside employment in a sales capacity, may solicit business on Bureau premises at any time, whether during the workday or on own time before or after working hours or during lunch or rest periods. In no case may Bureau premises be used for storage or display of merchandise. Special Agents are further restricted in outside employment as set forth in Part 1, 20-6.3.2 of this manual.

**1-16.1 Conflicting Outside Employment and Activities (See MAOP, Part 1, 1-27, 20-28; MIOG, Part 1, 67-11 (1)(d).)**

(1) An employee shall not engage in outside employment or any other outside activity that conflicts with his/her official duties. An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If it would require the employee's disqualification from matters so central or critical to the performance of his/her official duties that the employee's ability to perform the duties of his/her position would be materially impaired.

(2) Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards or require the employee to disqualify himself/herself from participation in certain particular matters under either subpart D or subpart E of 5 CFR Part 2635.

(3) Disqualification while seeking employment: (See MAOP, Part 1, 1-13.2.2(5).)

(a) Obligation to disqualify. Unless the employee's participation is authorized in accordance with (2) above, the employee shall not participate in a particular matter that, to his/her knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he/she

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is seeking employment. Disqualification is accomplished by not participating in the particular matter.

(b) Notification. An employee who becomes aware of the need to disqualify himself/herself from participation in a particular matter to which he/she has been assigned should notify his/her immediate supervisor. An employee who is responsible for his/her own assignment should take whatever steps are necessary to ensure that he/she does not participate in the matter from which he/she is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he/she is disqualified.

(c) Documentation. An employee need not file a written disqualification statement unless he/she is required by 5, CFR, Part 2634 to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by the FBI's ethics official or the person responsible for his/her assignment to file a written disqualification statement. However, an employee may elect to create a record of his/her actions by providing written notice to their supervisor or other appropriate official.

(d) Agency determination of substantial conflict. Where the FBI determines that the employee's action in seeking employment with a particular person will require his/her disqualification from matters so central or critical to the performance of his/her official duties that the employee's ability to perform the duties of his/her position would be materially impaired, the FBI MAY allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

(4) Waiver or authorization permitting participation while seeking employment:

(a) Waiver. Where an employee is engaged in discussions that constitute employment negotiations for purposes of Title 18, USC, Section 208(a), the employee may participate in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of Title 18, USC, Section 208(b) (1) or (b) (3).

(b) Authorization. Where an employee is seeking employment, a reasonable person would be likely to question his/her impartiality if he/she were to participate in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the Bureau's ethics officer has authorized his/her participation.

(5) Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) Employment or arrangement concerning employment. An employee shall be disqualified from taking official action in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he/she is employed or with whom he/she has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of Title 18, USC, Section 208(b) (1) or (b) (3).

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(b) Offer rejected or not made. The Bureau's ethics officer may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in MAOP, Part 1, 1-1, and a determination that the concern that a reasonable person may question the integrity of the Bureau's decision-making process outweighs the government's interest in the employee's participation in the particular matter.

**1-16.2 Teaching, Speaking and Writing (See MAOP, Part 1, 20-28; MIOG, Part 1, 67-11 (1)(d).)**

(1) An employee, shall not receive compensation from any source other than the government for teaching, speaking or writing that relates to the employee's official duties.

(2) Definitions of Terms: TEACHING, SPEAKING OR WRITING relates to the employee's official duties if:

(a) The activity is undertaken as part of the employee's official duties;

(b) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his/her official position rather than his/her expertise on the particular subject matter;

(c) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(d) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or

(e) The subject of the activity deals in significant part with:

1. Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

2. Any ongoing or announced policy, program or operation of the agency.

3. In the case of a noncareer employee as defined in 5 CFR 2636.303(a), the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his/her agency.

(3) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his/her official title or position to identify him/her in connection with his/her teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(a) An employee may include or permit the inclusion of his/her title or position as one of several biographical details when such information is given to identify him/her in connection with his/her teaching, speaking or writing, provided that his/her title or position is given no more prominence than other significant biographical details;

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(b) An employee may use, or permit the use of, his/her title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(c) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," "Doctor," or former military rank, may use or permit the use of that term of address or rank in connection with his/her teaching, speaking or writing. (See MAOP, Part 1, 1-14(4).)

(4) See MAOP, Part 1, 1-24, Prepublication Review Matters; 1-26.2, Types of Employee Public Speech; 1-26.3, Factors Determining Appropriateness of Employee Public Speech.

**1-17 ACTIVE PARTICIPATION IN MILITARY RESERVE OR NATIONAL GUARD UNITS (READY RESERVE STATUS) (See MAOP, Part I, 10-11.)**

(1) According to Department of Defense Directive 1200.7, heads of federal agencies should make determinations identifying key agency positions and the key personnel occupying such positions and then take the necessary action to assure that agency key employees holding key positions are not permitted to hold conflicting mobilization assignments with military Ready Reserve. If employees are permitted to hold conflicting mobilization assignments, the agency's emergency operating capabilities may be seriously eroded, which is contrary to the purpose and intent of preparedness planning.

(2) Due to the key federal employee status of Special Agents, following appointment of a New Agent with Ready Reserve Status the employee is required, as a condition of employment, either to request the appropriate branch of the military to transfer (screen) him/her from the Ready Reserve to the Standby Reserve, or request to be discharged from Reserve or National Guard obligation. Due to availability requirements of all Special Agent personnel, and in order to permit adequate contingency planning in the event of an emergency which would necessitate the mobilization of the Ready Reserve, Bureau policy precludes any Special Agent from enlisting, reenlisting, or reactivating into a Ready Reserve Unit (including Individual Mobilization Augmentee (IMA) billets and all National Guard billets, whether active or inactive). (See MIOG, Part I, Section 67.)

**1-18 POLITICAL ACTIVITIES**

(1) The Hatch Act, Title 5, United States Code (USC), Section 7324 et seq., prohibits federal employees from using their official authority or influence to interfere with or affect the result of an election and from taking an active part in partisan political management and partisan political campaigns. Partisan campaigns and issues are ones which are identified with a national or state political party or political party of a territory or possession of the United States. Permissible nonpartisan political activity includes campaigns and issues relating to constitutional amendments, referendums, approval of municipal ordinances and others of a similar character. In addition, other federal laws control certain political contributions and services; prohibit the political use of authority and influence; and prohibit most federal executive agency employees requesting or receiving from, or giving to, another federal employee, member of Congress, or officer of a uniformed service any thing of value for political purposes. See Title 5, USC, Sections 7321-7323.

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(2) Under the Hatch Act, federal employees do retain the right to vote as they choose and to express opinions on political subjects and candidates.

(3) The prohibitions of the Hatch Act are in effect whether an employee is on or off duty, and they apply to employees on leave, including employees on leave without pay. Violation of the Hatch Act is punishable by discharge or suspension for not less than 30 days.

(4) Beyond the above-mentioned administrative directives found in Chapter 73 of Title 5, USC, which pertain to political activities, employees should also be aware that there are federal criminal statutes and penalties relating to (a) promises of, or deprivation of, employment in connection with political contributions; (b) soliciting or making certain political contributions; or (c) intimidation to secure political contributions. See Title 18, USC, Sections 600-607.

(5) The Office of Personnel Management (OPM) has compiled a list of permissible and prohibited political activities derived from the Hatch Act. This list, as set forth below, is published in Title 5, Code of Federal Regulations (CFR), Section 734, Subpart D. These provisions apply to FBI employees, among others. In addition, the Department of Justice (DOJ), through regulation (Title 28, CFR, Section 45.735-19), has adopted the strictures on partisan political activities found in the above-cited OPM regulations.

**1-18.1 Permissible Activities (Title 5, CFR, Section 734, Subpart D) (See MAOP, Part I, 1-18.1(2), 1-18.3(1), 1-24.)**

(1) All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart. Each employee retains the right to --

- (a) Register and vote in any election;
- (b) Express (his or her) opinion as an individual privately and publicly on political subjects and candidates (note FBI policy limitations set forth below); (See MAOP, Part I, 1-18.3.)
- (c) Display a political picture, sticker, badge, or button (except in situations that are connected to his (or her) official duties, i.e., such items may not be displayed while on duty, on government property, including government vehicles);
- (d) Participate in the nonpartisan activities of a civic, community, social, labor, or other professional organization, or of a similar organization;
- (e) Be a member of a political party or other political organization and participate in its activities to the extent consistent with FBI policy limitations set forth below and with federal law;
- (f) Attend a political convention, rally, fund- raising function; or other political gathering (note FBI policy limitations set forth below);
- (g) Sign a political petition as an individual;
- (h) Make a financial contribution to a political party or organization (BUT SEE Title 18, USC, Section 603, dealing with contributions to one's federal employer);

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- (i) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election (BUT SEE MAOP, Part I, Sections 1-7, 1-8, 1-9, 1-16, and 20-6.1 ET SEQ. which require Bureau approval for outside employment);
  - (j) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
  - (k) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law (BUT SEE MAOP, Part I, Sections 1-7, 1-8, 1-9, 1-16, and 20-6.1 ET SEQ. which require Bureau approval for outside employment); and
  - (l) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not compromise his/her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his/her agency.
  - (m) Each employee has the right to engage in any of the activities listed in subsections (b), (c), (g), (j), and (l), as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office.
- (2) Paragraph (1) of this section does not authorize an employee to engage in political activity in violation of law; while on duty; while wearing a uniform, badge, or insignia that identifies the employing agency or the position of the employee; while in any room or building occupied in the discharge of official duties; or while using a government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties. The head of an agency may prohibit or limit the participation of an employee or class of employees of his/her agency in an activity permitted by paragraph (1) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests. (The FBI policy, which is more restrictive, is set forth below, under "FBI Policy.") (See MAOP, Part I, 1-18.3(1).)

**1-18.2 Prohibited Activities (Title 5, CFR, Section 734, Subpart D) (See MAOP, Part I, 1-18.3.)**

- (1) An employee may not take an active part in political management or in a political campaign, except as permitted by this subpart.
- (2) Activities prohibited by paragraph (1) of this section include but are not limited to--
  - (a) Serving as an officer of a political party, a member of a National, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
  - (b) Organizing or reorganizing a political party organization or political club;
  - (c) Soliciting, accepting, or receiving political contributions.
  - (d) Organizing, selling tickets to, promoting, or actively participating in a fund-raising activity of a candidate in a partisan election or of a political party, or political club;

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- (e) Taking an active part in managing the political campaign of a candidate for public office in a partisan election or a candidate for political party office;
- (f) Becoming a candidate for, or campaigning for, an elective public office in a partisan election;
- (g) Soliciting votes in support of or in opposition to a candidate for public office in a partisan election or a candidate for political party office;
- (h) Acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
- (i) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
- (j) Endorsing or opposing a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, a broadcast, campaign, literature, or similar material;
- (k) Serving as a delegate, alternate, or proxy to a political party convention;
- (l) Addressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;
- (m) Initiating or circulating a partisan nominating petition;
- (n) Soliciting, collecting, or receiving a contribution at or in the federal workplace from any employee for any political party, political fund, or other partisan recipient;
- (o) Paying a contribution at or in the federal workplace to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient; and
- (p) Deleted

### **1-18.3 FBI Policy**

(1) As noted above in Section 1-18.1(2) "the head of an agency may prohibit or limit the participation of an employee or class of employees of his/her agency in an activity permitted by Section 1-18.1(1), if participation in the activity would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interests." This discretionary authority has been exercised by the FBI, and, as a matter of policy concerning FBI standards of conduct, FBI employees are restricted in the nature of their participation in political activities, partisan or otherwise.

(2) Of course, FBI employees retain the right to vote as they choose and to register and vote in any election. Also, FBI employees are entitled to express their opinions on political matters and matters of public interest. However, sound discretion and judgment dictate that such activity be conducted with the utmost care so as not to interfere with the efficient performance of the employee's official duties, or create a conflict or apparent conflict of interest.

(3) By virtue of our role and status in law enforcement, the FBI as an organization, and its employees individually, have assumed some special responsibilities. Employees must recognize

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that their participation in political activities can easily be subject to misinterpretation and criticism by the public, which can readily impact on the efficiency, effectiveness, and integrity of the FBI as an organization. Clearly, the more actively and overtly the employee participates in a political activity and the more directly the employee is identified as an FBI employee, the more likely the potential for interference with the efficient performance of the employee's official duties. Likewise, FBI employees should avoid any political activity which has the slightest partisan connection (thereby suggesting that the FBI favors any political party) or which, by virtue of the employee's participation, will hamper or render less effective the performance of the employee or adversely reflect upon the integrity of the FBI. Employees must fully understand the inherent difficulty involved in separating themselves personally from their positions as FBI employees where participation in political activities is concerned. Also, when an employee participates in political activity, his/her conduct must comport with the standards of professionalism and good judgment which are required generally of FBI personnel.

#### **1-18.3.1 Off-Duty Political Activities**

While off duty, FBI personnel may participate in permissible political activities, as set forth above. However, employees must take steps to make it absolutely clear that the opinions they express are their own personal opinions, not those of the FBI. In this regard, employees must not highlight their FBI employment status unnecessarily through volunteering the fact that they are employed by the FBI or through conspicuously displaying FBI insignia when engaging in permissible political activities. Further, since professionalism and good judgment are required of all FBI personnel, off duty as well as on duty, employees must not engage in political activities in a manner which is clearly offensive, outrageous, nonpeaceful or otherwise unprofessional.

#### **1-18.3.2 On-Duty Political Activities**

(1) While on duty, FBI personnel are prohibited from engaging in otherwise permissible political activities when in contact with the public. Exchanging political views with members of the public while on duty may suggest favoritism or bias on the part of the FBI toward political candidates or parties. The FBI, like all law enforcement agencies, must be perceived by the public as nonpartisan and apolitical. While on duty, employees are prohibited from displaying to members of the public any button, sign, advertisement,

etc., of a partisan nature. Likewise, no advertisement supporting any political candidate/party or any public issue may be placed on Government property, including Government vehicles.

(2) In order to ensure harmonious and close working relations with co-workers in the workplace, no political buttons, signs or other advertisements may be displayed within FBI or Government office space or vehicles. Similarly, FBI employees must avoid protracted political discussions or debate with co-workers in the workplace, since such activity can easily disrupt or negatively impact upon harmonious working relations and efficient office operations.

(3) Failure to adhere to Federal laws and regulations, and FBI policy, as set forth above, regarding participation in political activities may result in an employee's discharge, suspension, or other administrative action.

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(4) In the event an FBI employee desires to participate in some form of political activity (other than partisan political activity) beyond voting and discreet expressions of opinion on matters of political or public concern, and if there is any doubt about whether the activity is prohibited, the employee is advised to seek guidance from the Administrative Summary Unit, Personnel Division, FBIHQ.

### **1-19 CONFIDENTIAL NATURE OF FBI OPERATIONS**

(1) Employees must afford confidential orders involving special assignments and, in some instances, transfers appropriate secrecy in accordance with the exigencies thereof. Should there be any doubt in these matters, the advice of the SAC or ASAC should be sought.

(2) Employees are required to keep strictly confidential all information secured in their official capacities. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing severe penalties. (See also regulations set out in Manual of Investigative Operations and Guidelines, Part 2, Section 26, on unauthorized disclosure of classified security information.)

**1-19.1 Deleted** (See *Security Policy Manual* at [http://rmd.fbinet.fbi/ppu/manuals-desk/manuals\\_published\\_in\\_new\\_format.htm](http://rmd.fbinet.fbi/ppu/manuals-desk/manuals_published_in_new_format.htm))

**1-20 Deleted** (See *Security Policy Manual* at [http://rmd.fbinet.fbi/ppu/manuals-desk/manuals\\_published\\_in\\_new\\_format.htm](http://rmd.fbinet.fbi/ppu/manuals-desk/manuals_published_in_new_format.htm))

### **1-21 EMPLOYEES' RIGHTS UNDER THE PRIVACY ACT OF 1974**

#### **1-21.1 Privacy Act of 1974**

In accordance with a provision of the Privacy Act (Title 5, USC, Section 552a(e) (3)), each FBI employee who is requested to provide personal information about himself/herself or his/her personal activities must be apprised of the authority which allows the solicitation of information, whether providing the information is mandatory or voluntary, the purpose and use to be made of that information, and the effects on that individual if individual does not provide this information. This notice need not be provided if the solicitation of information from the employee is related to an investigation of alleged criminal activity. Each applicant for employment with the FBI is furnished a statement contained in our Application for Employment (FD-140) and in the form entitled Applicant Background Survey (FD-804). This statement includes the FBI authority to conduct personnel investigations pursuant to Title 28, Code of Federal Regulations, Section 0.137, the reasons and uses of the solicitation of information which was to determine the suitability for employment, and advises that willfully making a false statement or concealing a material fact would be the basis for dismissal if an applicant received an appointment. In addition to the above, each employee should be aware that he or she may be asked to furnish information concerning themselves by completing various forms during their tenure with the Bureau in order for the Bureau to carry out its many administrative duties and responsibilities.

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**1-21.2 Standards of Conduct**

(1) All employees are expected to abide by the standards of conduct set forth in Executive Order 12674 dated April 12, 1989, Departmental Order 350-65 and rules and regulations of the FBI pursuant to the above-mentioned authority set forth in the Code of Federal Regulations.

(2) According to these regulations, investigations will be conducted in connection with violations of the standards and will include an interview of the employee involved. The purpose of the inquiry will be to determine whether disciplinary action is warranted. The inquiry may encompass any conduct which is reasonably related to work performance. Thus, a disciplinary inquiry is not restricted to activities within the critical elements and performance standards of the employee's position and may also include on- or off-duty conduct when such conduct affects an employee's ability to perform his or her job or adversely affects the Bureau's ability to secure needed cooperation from members of the public. If an employee refuses to cooperate in an interview during an administrative inquiry regarding work performance or other conduct which affects job performance, that employee could be disciplined for insubordination. Failure by an employee to follow all regulations will result in appropriate disciplinary action, including possible dismissal.

It is not intended that an administrative inquiry will involve an unreasonable intrusion into the private lives of FBI employees. These inquiries will be pursued only where there are indications that the conduct in question impacts upon work performance and/or the ability of the FBI to discharge its responsibilities.

**1-21.3 Penalties**

The Privacy Act of 1974 sets forth the following provisions which you should be aware of regarding criminal penalties which may be imposed under certain circumstances:

(1) Any officer or employee of an agency, who by virtue of employment or official position, has possession of, or access to, agency records which contain individually identifiable information, the disclosure of which is prohibited by this section or by rules or regulations established thereunder; and, who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

**1-22 INTELLIGENCE OVERSIGHT BOARD (See NFIPM, Section 2-56.)**

(1) The President, by Executive Order 12863 of September 13, 1993, established the Intelligence Oversight Board as a standing committee of the President's Foreign Intelligence Advisory Board. The Board is charged with reviewing activities of the Intelligence Community and informing the President of any activities that any member believes are in violation of the Constitution, the laws of

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the United States, or Executive Orders, or Presidential Directives. In this regard, the Board will receive and consider reports of Inspectors General and General Counsels of the Intelligence Community concerning any intelligence activities of their organizations that they have reason to believe may be unlawful or contrary to Executive Orders, Presidential Directives, or other guidelines or regulations approved by the Attorney General, in accordance with Executive Order 12333, if such provisions were intended to protect the individual rights of a United States person.

(2) In the FBI, reports to the Board are submitted by the Office of the General Counsel (OGC). Employees must refer matters which they believe may require submission to the Board to the Inspection Division, Attention: Internal Investigations Section (IIS), and the OGC. It should be noted in this regard that matters involving allegations of illegal or improper personal conduct on the part of government employees generally are not matters within the purview of the Intelligence Oversight Board. Accordingly, allegations of illegal or improper personal conduct which are not related to the FBI's intelligence or counterintelligence responsibilities, if detected, should be reported to the FBI's Initial Processing Unit, IIS, INSD. Additionally, while reports of overdue administrative or investigative activities conducted under the NSIG may be considered in evaluating the work performance of FBI employees, such errors are not required to be reported to OGC as potential IOB matters.

(3) Pursuant to provisions of Executive Order 12863, of September 13, 1993, on a quarterly basis, each field office and FBIHQ division is required to submit to the OGC, Attention: NSLB, an electronic communication (EC) certifying that all employees of the office or division have been contacted concerning the requirement to report any intelligence or counterintelligence activities within their office or division that they believe may be unlawful or contrary to Executive Order, Presidential Directive, or Departmental regulation. Such canvassing may be accomplished by e-mail. EC certifications reporting the results of employee canvassing may be signed out by an ASAC or Deputy Assistant Director, as appropriate. Allegations of potential IOB violations not previously reported pursuant to the requirements of Section 2-56 of the NFIPM shall be reported to OGC within 14 days of discovery. The failure to report such matters, for whatever reason, may result in severe disciplinary action, up to and including dismissal from the FBI.

(4) Questions concerning the IOB process or reporting procedures should be directed to IIS, INSD, or NSLB, OGC.

(5) Reports of potential IOB errors can be submitted electronically using FBI form number FD-962.

### **1-23 DEPARTMENT OF JUSTICE OFFICE OF PROFESSIONAL RESPONSIBILITY**

(1) By Departmental Order No. 635-75, the Department of Justice Office of Professional Responsibility (DOJ-OPR) was created to oversee investigations of allegations of criminal or ethical misconduct by departmental employees. The office, headed by a Counsel, is responsible for reviewing allegations against departmental employees involving violations of law, regulations or standards of conduct. To this end, DOJ-OPR serves as a special review and advisory body, reporting directly to the Attorney General or, in appropriate cases, to the Deputy Attorney General or the Solicitor General.

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(2) Each employee has the responsibility to report promptly, any indication of possible exploitation or misuse of Bureau resources; information as to violations of law, rules or regulations; personal misconduct; or improper performance of duty as stated in MAOP, Part I, 13-1. Reporting may be to supervisors, the Director, the Office of Professional Responsibility, Inspection Division, FBIHQ, or directly to the Department of Justice Office of Professional Responsibility, Washington, D.C.

(3) Each SAC and division head is to bring the above reporting requirement to the attention of all employees on June 1, and December 1, of each year. Forward a letter to the attention of Office of Professional Responsibility, Inspection Division, when this has been accomplished.

(4) Whenever any employee provides information pursuant to this requirement, that employee's confidentiality shall be maintained unless the employee consents to the release of his or her identity or it is determined by DOJ-OPR that the disclosure of the identity is necessary to resolve the allegation.

#### **1-23.1 Protecting Employees (Whistleblowers) From Official Reprisals**

(1) Pursuant to the Civil Service Reform Act of 1978, Section 2303 of Title 5, United States Code, as added by Section 101(a), employees of the FBI who disclose information of violation of law, mismanagement, gross waste of funds, or other misconduct are protected from official reprisals. Official reprisal includes, but is not limited to, punitive personnel action taken or favorable action not taken in order to penalize an employee for having discharged the duty to report. This protection is assured by the monitoring of such employee's subsequent career by Office of Professional Responsibility, Inspection Division, in order to detect any official reprisal.

(2) Office of Professional Responsibility, Inspection Division, will receive complaints of reprisal and furnish any evidence to the Director and DOJ-OPR. Complaints may also be made directly to DOJ-OPR. If the Counsel, DOJ-OPR, determines that reasonable grounds exist to believe that personnel action was taken or favorable action not taken as a reprisal for disclosure of information, the Attorney General may, upon request by the Counsel, DOJ-OPR, stay such action.

#### **1-24 PREPUBLICATION REVIEW**

(1) CROSS-REFERENCES: MAOP, Part 1, 1-16 (Outside Employment); 1-18 (Political Activities); 1-26 (Employee Public Speech Rights and Obligations); 1-27 (Service as an Expert Witness); 20-6 (Outside Employment), and 20-28.3 (Administration and Requirements of PTAP). See also 28 CFR Section 17.144 (Nondisclosure of Classified Information) and 5 CFR Part 2635 (Standards of Conduct).

(2) BACKGROUND (See MAOP, Part 1, 1-14 (4).)

(a) This section promulgates regulations and provides guidance on the FBI's prepublication review program. It applies to both current and former employees and is meant to regulate individual conduct as well as to set forth organizational policy.

(b) As a condition of employment, all FBI personnel signed an "Employment Agreement" (FD-291) in which they promised to never divulge, publish, reveal, or otherwise disclose any information or material from or relating to FBI files or any other information acquired by virtue of their official employment, duties, or status, without the written permission of the Director. Each employee also

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promised to present the full text of any proposed disclosure in writing for the Director's consideration at least 30 days in advance of the proposed disclosure. BREACH OF THESE OBLIGATIONS IS GROUNDS FOR DISCIPLINARY ACTION, A CIVIL SUIT AGAINST THE OFFENDER, OR BOTH. IN SOME INSTANCES, UNAUTHORIZED DISCLOSURE MAY ALSO CONSTITUTE CAUSE FOR REVOCATION OF A SECURITY CLEARANCE OR BE A CRIMINAL OFFENSE. For example, Title 5, USC, Section 552a(i)(1) makes it a crime to wrongfully disclose individually identifiable information from a system of records protected by the Privacy Act; and Title 18, USC, Section 1905 makes it a crime for federal employees to wrongfully disclose trade secrets acquired during the course of their employment.

(c) The FBI prepublication review program is designed to implement the Employment Agreement by establishing a process by which employees and former employees who wish to make disclosures--WHETHER ORAL, ELECTRONIC, OR WRITTEN--within the scope of the agreement may request permission to do so. By its nature, the prepublication review process contemplates a tangible expression of information. Most often this involves a writing but, regardless of the medium through which a disclosure is to be made (written, oral, electronic, etc.), an employee's obligation under the Employment Agreement is NOT to disclose ANY information within the scope of the agreement without written permission to do so.

1. Thus, outlines of oral presentations, drafts and manuscripts of fictional or nonfictional written works, software and other electronic works, and so forth must be submitted for prepublication review if their subject matter falls within the scope of the Employment Agreement.
2. Disclosures made in the performance of official duties are outside the scope of the prepublication review program. Official speeches, writings, and publications are reviewed and authorized by cognizant FBI officials and need not be further reviewed. (See MAOP, Part 1, 1-12.)
3. Completely extemporaneous oral disclosures by their very nature cannot be reviewed in advance. This does not mean that an employee or former employee can disregard the terms of the Employment Agreement when making such disclosures; on the contrary the Agreement covers ALL disclosures, not just written ones. It does, however, mean that as a practical matter, compliance with the prepublication review program is impossible in such situations. Thus, while an employee or former employee may be held accountable for making an extemporaneous oral disclosure of information obtained during the course of FBI employment without permission to do so, he or she will not be sanctioned for failing to comply with the prepublication review program.

(d) Compliance with the prepublication review program does not relieve a current employee from the obligation to comply with the FBI's outside employment rules or the Standards of Ethical Conduct for the Executive Branch. Thus, current employees must ensure that any acceptance of compensation for speaking or writing conforms to these rules and standards.

(3) BASIC RULE (See MAOP, Part 1, 1-14 (5).)

(a) Current and former employees must submit to the Office of Public and Congressional Affairs (OPCA) for prepublication review any nonfiction or fiction work, regardless of the medium in which the work is to be memorialized, that they intend to publish or otherwise divulge which discusses, concerns, is based on, derived from, or otherwise relates to any data, information, files,

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documents, or materials acquired from or relating to FBI files or any other information acquired by virtue of official employment, duties, or status.

1. No disclosure is authorized prior to the completion of the prepublication review process. Thus, oral disclosures and disclosures of drafts, initial manuscripts, and so forth to prospective publishers, co-authors, ghost writers, attorneys, or other persons not properly authorized to have access to the information in question are prohibited if the subject of the disclosure falls within the scope of the basic rule.
2. Works that clearly have nothing to do with the FBI or its activities, investigations, mission, or which are not otherwise related to any information, documents, or materials acquired by virtue of FBI employment, duties, or status need not be submitted for review. For example, a book of children's stories, an article on stamp collecting, or an outline of a presentation on religion need not be submitted for prepublication review.
3. For further information, see 28 CFR Section 17.144.

(4) PROCEDURES

(a) The following procedures govern the prepublication review process:

1. Submissions must be made in writing even if an oral disclosure is contemplated. Submissions must be presented to OPCA at least 30 WORKDAYS in advance of the proposed disclosure. (Some oral presentations are not scheduled that far in advance. In such cases, the concerned employee must submit the related written materials as far in advance as possible. The Bureau will endeavor to review the material in a timely manner but disclosure is not authorized until the review is complete.)
2. OPCA will coordinate the prepublication review process for the Director. In this regard, OPCA will --
  - a. provide assistance to persons with questions about the prepublication review process.
  - b. prepare the FBI response to each request for prepublication review not later than 30 workdays after the request and all related materials are received by the FBI. (The day of receipt is not counted for purposes of calculating the 30 work day period but the day of response is.)
  - c. screen all requests:
    - (i) If no further review is required, then OPCA will inform the requester in writing that the FBI has no objection to disclosure or publication of the material in question.
    - (ii) If further review is required, then OPCA will refer the work, in writing, to a prepublication review panel (see below), via the responsible division Assistant Director (AD), and inform the requester in writing that the work has been received and is under review.
    - (iii) If the request reveals that the author has breached his or her Employment Agreement by making an unauthorized disclosure prior to submitting the work for review, then OPCA will forward copies of the request and the work to the Deputy General Counsel, Litigation Branch, Office of the General Counsel (OGC) for possible institution of civil suit against the author. If the author is a current employee, then OPCA shall also forward copies to the Personnel Security Unit, National Security Division, for evaluation of the effect of the disclosure on the employee's

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continued trustworthiness and security clearance, and to the Office of Professional Responsibility (OPR) for further investigation. OPCA will also simultaneously pursue the actions described in subparagraphs (i) or (ii) above, as appropriate in such cases, unless directed to the contrary by OGC or OPR.

3. A prepublication review panel shall review all works referred by OPCA for further review:

a. Three panels shall be constituted. Each panel shall be comprised of one FBI employee from each of the following: the Criminal Investigative Division, the National Security Division, the Counterterrorism Division, the Investigative Services Division, the Information Resources Division, the Laboratory Division, and the Training Division. Members will be appointed in writing by their respective division AD and shall serve one-year terms. Designated attorneys appointed by the General Counsel shall provide legal advice and counsel to the panels, as needed.

b. OPCA shall refer a work to a panel via the AD who, in OPCA's judgment, has the greatest interest in the subject matter of that particular work. (Advance copies of the work will be provided directly to the panel members by OPCA to permit them to begin their substantive review.) That AD shall then be responsible to OPCA, acting for the Director, for ensuring that the panel to which the work is assigned completes its review in a timely and substantively correct manner. The panel member from the division through which the work is referred by OPCA shall act as the chairperson for the review panel for that particular work and is responsible to his or her respective AD for completing the review in a timely and substantively correct manner.

c. When a work is referred to a panel, each member shall review the work in question using the standards set forth below and such guidelines as may be provided by OPCA. (OPCA will provide the panel with seven copies of the work at the time of the referral, one for each member.) The panel may request the assistance of any FBI employee with specialized knowledge or skills in reviewing the work. Additionally, the panel may request the assistance of personnel from other agencies or entities if the work pertains or relates to matters under the cognizance of or involves the expertise of such agencies or entities.

d. The panel may meet to discuss the work or otherwise determine how to proceed at the discretion of the chairperson. The panel will either authorize disclosure in full or provide written objections to specific portions (by page and paragraph number) specifying why the FBI should withhold permission to disclose. The chairperson shall be responsible for writing up the panel's findings but may task any member of the panel with assisting. The panel's findings must be submitted to OPCA not later than five workdays before the date when the FBI response is due to the author. OPCA may presume that the panel has no objections to the work if this deadline is not met.

4. If a panel objects to disclosure of any portion of a work, OPCA shall notify the requester that the FBI withholds permission to disclose or publish the portions to which the board has objected and request such modifications as may be necessary. If the author submits corrected portions for further review, OPCA will continue to work with the requester and the concerned panel until final clearance is authorized. If a particular matter cannot be resolved, then the requester may appeal to the Director. The decision of the Director is final, except that decisions relating to the deletion of classified information may be appealed to the Deputy Attorney General per 28 CFR Section 17.144(s)(3).

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5. If a current or former employee publishes or otherwise discloses information within the scope of the Employment Agreement without obtaining the requisite FBI authorization, and OPCA (or any other FBI entity or employee) learns of the violation, then they will refer the case to the Deputy General Counsel, Litigation Branch, OGC and to OPR and the Personnel Security Unit if the individual is a current employee. OGC will determine whether institution of civil suit is warranted. OPR will investigate the matter and refer the case, if warranted, for consideration of appropriate disciplinary action to the Adjudication Unit. The Personnel Security Unit will evaluate the effect of the disclosure on the employee's continued trustworthiness for security access and clearance.

6. Any work submitted for prepublication review is presumed to be proprietary and shall not, with the exceptions set forth in paragraph 3.c. above, be disseminated to any person not involved in the prepublication review process or in the enforcement of that process. In general this means that the work shall not be disclosed outside OPCA and the concerned prepublication review panel except on a "need-to-know" basis during the prepublication review process, and to OGC and OPR during the enforcement process. No copies of the work may be made without the approval of OPCA.

(5) STANDARDS

(a) The following standards will be observed during the review process:

1. Proposed disclosure or publication by current or former employees of the following ordinarily will be grounds for objection:

- a. Information protected from agency disclosure by the Privacy Act;
- b. Information that is classified or the disclosure of which could otherwise harm national security;
- c. Information that reveals sensitive law enforcement, intelligence, or counterintelligence techniques, sources or methods; or that reveals the sensitive, confidential, or proprietary techniques, sources, or methods of other agencies or governmental entities;
- d. Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure;
- e. Information that would reveal the identity of a confidential source or informant;
- f. Information that relates to any sensitive operational details or the substantive merits of any ongoing or open investigation, inquest, probe, prosecution, appeal, or case;
- g. Information that consists of the proprietary information of another, including trade secrets;
- h. Information pertaining to wiretaps or intercepts protected or regulated by Title III (Title 18, USC, Sections 2510-2520);
- i. Information pertaining to currency transaction reports regulated or protected by Title 31, USC, Section 5319;
- j. Tax return information regulated or protected by Title 26, USC, Section 6103;
- k. Information pertaining to contractor bids or proposals or source-selection information before the award of the procurement contract to which the information relates;
- l. Information protected from disclosure by any other federal statute or regulation; and

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m. Information exempt from disclosure under the Freedom of Information Act (Title 5, USC, Section 552) unless the material is clearly already in the public domain.

2. No objection to disclosure or publication by a current or former employee will be interposed solely because a work is critical or disparaging of the FBI, the government, or its officers and employees. If, however, a work by A CURRENT EMPLOYEE contains material the disclosure of which would adversely affect the ability of the FBI to effectively and efficiently fulfill its responsibilities to the public (including speech concerning private grievances or that impairs discipline or harmony among co-workers or exerts a detrimental impact on close working relationships for which personal loyalty and confidence are necessary), then the declarant or author shall be informed that disclosure or publication may result in adverse consequences, including disciplinary action. In other words, the FBI will not object to the disclosure or publication of such material but the declarant or author may be warned that disclosure is not without potential consequences.

3. No objection will be interposed solely because of errors (factual, grammatical, or otherwise) in the work.

**1-25 DRUG DETERRENCE PROGRAM (DDP) CONSISTING OF THE  
DRUG-FREE WORKPLACE PROGRAM (DFWP) AND ALCOHOL AND CONTROLLED  
SUBSTANCE ABUSE PROGRAM (ACSAP) (See MAOP, Part 1, 24-8.2(3).)**

**1-25.1 Background and Purpose, DFWP**

(1) On May 7, 1986, the FBI and the DEA adopted a joint policy statement that sets forth the details of the FBI's Drug-Free Workplace Program (DFWP). All employees were notified of the new FBI/DEA policy by the Director's June 3, 1986, Memorandum to All Employees. On July 28, 1986, Agent applicant testing commenced.

(2) On September 15, 1986, President Reagan signed Executive Order (EO) 12564 establishing the goal of a drug-free federal workplace. The order made it a condition of employment for all federal employees to refrain from using illegal drugs on or off duty.

(3) The EO recognized that illegal drug use seriously impairs a portion of the national work force. The FBI is concerned with the well-being of its employees, the successful accomplishment of its missions, and the need to maintain employee productivity. The intent of a drug-testing policy is to offer a helping hand to those who need it, while sending a clear message that any illegal drug use is incompatible with federal service.

(4) On July 11, 1987, legislation was enacted affecting implementation of the EO under Section 503 of Public Law 100-71 in an attempt to establish uniformity among federal agency drug-testing plans, reliable and accurate drug testing, employee access to drug-testing records, confidentiality of drug test results and centralized oversight of the federal government's drug-testing program.

(5) The purpose of the FBI's DFWP is to set forth objectives, policies, procedures, and implementation guidelines to achieve a drug-free federal workplace, consistent with the EO and the mandatory guidelines required by subsection (a)(1)(A)(ii) of Section 503 of Public Law 100-71. The intent of Congress and the President is clear: illegal drug use by federal employees, on or off

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duty, particularly in agencies such as the FBI, is inconsistent with the national security and with the public's health and safety.

**1-25.1.1 Background and Purpose, ACSAP**

(1) The Omnibus Transportation Employee Testing Act ("the Act") of 1991 (Public Law 102-143), was signed into law by former President Bush on October 28, 1991. The Act requires alcohol and drug testing of safety-sensitive employees in the aviation, motor carrier, railroad and mass transit industries.

(2) The Act recognizes that alcohol abuse and illegal drug use pose significant dangers to the safety and welfare of the Nation. Millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses and depend on the operators of such to perform in a safe and responsible manner.

(3) The Act further acknowledges that efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs by individuals involved with the operation of these vehicles. The use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to be a critical factor in transportation accidents. Testing has shown to be the most effective deterrent to abuse of alcohol and the use of illegal drugs.

(4) The Secretary of Transportation was charged with the responsibility of expanding drug and alcohol testing regulations. These regulations would affect over seven million employees in the transportation industry, to include certain covered employees within the federal government. Final rules were published in the Federal Register on February 15, 1994.

(5) In response, the FBI's Drug Deterrence Program developed a comprehensive Alcohol and Controlled Substance Abuse Program (ACSAP) for all FBI employees operating commercial motor vehicles for official Bureau business. This program was approved by the Director on February 19, 1999.

(6) The intent of the FBI's Alcohol and Controlled Substance Abuse program is to prevent accidents and injuries resulting from alcohol and/or illegal drug use.

**1-25.2 Statement of Policy, DFWP**

(1) The FBI has been charged with enforcing the federal narcotics laws and is expected to be drug-free. It has been a longstanding FBI policy that employees should never cause themselves to be mentally or physically unfit for duty. (See MAOP, Part 1, Section 1-2 supra.) The use of illegal drugs is strictly prohibited at any time. As employees of the nation's chief federal law enforcement agency, FBI employees must not themselves engage in criminal conduct. See the Memorandum to all Employees dated May 15, 1981, captioned "Disciplinary Matters," regarding the FBI Personal Conduct Policy.

(2) The very nature of the FBI's investigative work and unique mission in the criminal, domestic security, foreign counterintelligence and security-loyalty background areas demands that a high degree of special trust be required not only in the conduct of these investigations but also by all personnel who are involved in the reporting, processing and filing of our investigative results. The unauthorized dissemination of material or information developed during our investigations or

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maintained in our files (by employees such as Office Automation Clerks/Assistants as well as by Special Agents) would significantly affect our mission, endanger the lives or safety of our Agents or informants, destroy or diminish their usefulness and invade personal privacy. Thus, it is imperative that ALL employees conduct their lives in such a way that they are free from potential blackmail or other possible pressure from agents of hostile foreign governments who wish to procure sensitive information contained in the FBI's records.

(3) Pursuant to Office of Personnel Management (OPM) guidelines, all positions within the FBI are designated "critical sensitive," permitting employees access to classified information. Federal drug testing can be done on all jobs labeled "critical sensitive"; therefore, all FBI positions are testing designated. Furthermore, EOs 10450 and 12356 and Director of Central Intelligence Directive 1/14 make it clear that drug use by federal employees with access to classified information is NOT consistent with the interests of national security.

(4) In carrying out the FBI's mission, Special Agents conduct many types of investigations over which the FBI has jurisdiction; must be available for general and special assignments whenever and wherever their services are required; must apprehend subjects, many of whom are armed and dangerous; participate in undercover assignments; operate automobiles at high speed; be able to subdue persons and defend themselves and others as required; and must operate scientific crime detection devices and investigative equipment, and firearms, explosives and gases. Therefore, they must remain alert and in total control of their physical and mental faculties and unencumbered by drugs. The FBI believes that the threat to public safety posed by Special Agents (as well as a wide variety of support employees with investigative duties) whose judgment may be impaired by illegal drug use is a legitimate factor in establishing a mandatory urinalysis drug-testing program.

(5) Assignments for Special Agents and many support employees alike necessitate appearing and testifying before courts, grand juries, and other judicial and administrative tribunals. Hence, FBI employees who are themselves violating the drug laws would be impeachable and lose all credibility as witnesses.

As a result of the above, the FBI has an especially compelling obligation to deter and eliminate illegal drug use from its workplace. FBI officials have a legitimate interest in assuring that all employees are not under the influence of illegal drugs and that they are fully capable of performing their duties. The FBI believes this summary of the necessity for Special Agents to be unencumbered by the effects of illegal drug use to be equally applicable to all support positions within the FBI as job functions associated with these positions directly and immediately relate to public health and safety, the protection of life and property and/or to the national security.

(6) The FBI's DFWP therefore established a comprehensive drug-testing program which, as applied to FBI employees, consists of the following:

- (a) The testing/screening of all applicants seeking employment;
- (b) The testing of probationary Special Agents during the first two years of employment;
- (c) The testing of employees when there is reasonable suspicion of illegal drug use;
- (d) The testing of all employees under a "random testing" program;

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- (e) Follow-up testing; and
- (f) The testing of employees on a voluntary basis.

**1-25.2.1 Statement of Policy, ACSAP**

(1) FBI employees who operate commercial motor vehicles are charged with operating these vehicles in a safe and responsible manner. It has been a longstanding FBI policy that employees should never cause themselves to be mentally or physically unfit for duty. (See MAOP, Part 1, Section 1-2 supra.) The use of illegal drugs is strictly prohibited as is the use of alcohol and/or controlled substances, except when the controlled substance use is pursuant to the instructions of a physician who has advised that the use does not adversely affect the ability to safely operate a commercial motor vehicle.

(2) As a result, the FBI's ACSAP has a compelling obligation to deter alcohol and/or drug use by FBI employees who operate commercial motor vehicles. To ensure compliance, the ACSAP will test commercial motor vehicle operators under the following categories:

(a) Post-Accident Testing - A driver will be tested as soon as practical following an accident involving a Commercial Motor Vehicle, when he/she:

1. Was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
2. Received a citation under state or local law for a moving violation arising from the accident.

(b) Random Testing - A Commercial Motor Vehicle Operator will be subject to random testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(c) Reasonable Suspicion Testing - This type of testing for drugs and/or alcohol may be required when the employee's management official has reason to believe that the driver has used or is using illegal drugs and/or alcohol. This belief must be based on specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(d) Return-to-Duty Testing - This type of testing will be required after the driver has engaged in prohibited alcohol use.

(e) Follow-Up Testing - This type of testing will be required following a determination, by a Substance Abuse Professional, that a driver is in need of assistance in resolving problems associated with alcohol and/or controlled substances on an unannounced basis.

(f) Pre-Duty - FBI employees who are assigned to a testing designated position will be required to undergo a pre-duty drug test prior to the first time a CD performs a safety-sensitive function.

In addition, Commercial Motor Vehicle Operators are also subject to drug testing as required by the DFWP.

**1-25.3 Employee Notifications, DFWP**

(1) Memorandum to All Employees dated June 3, 1986, from Director Webster advised of the provisions of the DDP.

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(2) Memorandum to All Employees dated November 14, 1989, from Director Sessions advised of random testing.

**1-25.3.1 Employee Notification, ACSAP**

Memorandum to All Employees dated August 5, 1999, from Director Freeh advised of the provisions of the Alcohol and Controlled Substance Abuse Program.

**1-25.4 Drugs to be Screened, DFWP**

In accordance with Department of Health and Human Services (HHS) guidelines, the testing process involves the detection of the following categories of drugs:

- (1) Amphetamines
  - (a) Amphetamine
  - (b) Methamphetamine
- (2) Cocaine
- (3) Cannabinoids
- (4) Opiates
  - (a) Codeine
  - (b) Morphine
- (5) Phencyclidine (PCP)

In the case of reasonable suspicion testing, any drug in Schedule I and II can be tested for in accordance with HHS guidelines.

**1-25.4.1 Drugs to be Screened, ACSAP**

FBI testing protocol involves the detection of the following substance:

- (1) Alcohol
  - (a) Ethanol
- (2) Amphetamines
  - (a) Amphetamine
  - (b) Methamphetamine
- (3) Cocaine
  - (a) Benzoyllecgonine
- (4) Cannabinoids
  - (a) Marijuana (THC)
- (5) Opiates

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- (a) Codeine
- (b) Hydromorphone (Dilaudid)
- (c) Oxycodone
- (6) Phencyclidine (PCP)

In the case of reasonable suspicion testing, an employee can be tested for any drug in Schedule I and II in accordance with HHS guidelines.

### **1-25.5 Detection Method, DFWP**

Urinalysis testing is performed using a two-step screening-confirmation process.

- (1) Initial screening immunoassay (IA) is a rapid semi- quantitative chemical test which uses a specific antibody to react with the drug or metabolite of interest.
- (2) Confirmation assay used in the drug analysis procedure is GC/MS, Gas Chromatography/Mass Spectrometry, which is scientifically acknowledged to be the most sensitive and accurate method for confirming the presence of drugs in biological samples.

### **1-25.5.1 Detection Method, ACSAP**

#### **(1) Controlled Substance Testing**

Urinalysis testing is performed using a two-step screening-confirmation process.

- (a) Initial screening immunoassay (IA) is a rapid semiquantitative chemical test which uses a specific antibody to react with the drug or metabolite of interest.
- (b) Confirmation assay used in the drug analysis procedure is GC/MS, Gas Chromatography/Mass Spectrometry, which is scientifically acknowledged to be the most sensitive and accurate method for confirming the presence of drugs in biological samples.

#### **(2) Alcohol Testing**

(a) Evidential Breath Testing (EBT) devices will be used to measure alcohol concentrations in the breath. A screening test shall be conducted to determine whether the employee has a prohibited concentration of alcohol in the system. Confirmation testing shall be conducted when the result of the screening test is 0.02 or greater.

(b) Testing shall be conducted using Electrochemical Oxidation/Fuel Cells. This method of measuring breath alcohol uses special electronic components that generate electrical energy by oxidizing alcohol. The components are called "electrochemical cells," or fuel cells, which are comprised of two platinum electrodes.

How does the fuel cell work?

1. When the subject blows into a mouthpiece, a small (1.5 cc) sample of expired breath is drawn into the fuel cell for analysis.
2. When breath containing alcohol molecules comes into contact with the fuel cell, a spontaneous flow of electricity is generated. The amount of electrical current generated indicates how much

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alcohol is present in the breath sample. The end result is the alcohol measurement which is displayed on the EBT.

**1-25.6 Scope of Testing, DFWP**

The FBI's DFWP establishes a comprehensive drug-testing program in the test/screening of all applicants seeking employment with the FBI, testing of probationary Special Agents during their first two years of service, testing of employees when there is "reasonable suspicion" of illegal drug use, the testing of all FBI employees under a random selection program and voluntary testing. In addition, all employees who undergo a counseling and rehabilitation program for illegal drug use through the Employee Assistance Program (EAP) will be subject to unannounced follow-up testing.

**1-25.6.1 Scope of Testing, ACSAP**

(1) The FBI's ACSAP establishes a comprehensive drug and alcohol testing program for employees who operate Commercial Motor Vehicles (CMV). Drug testing will be done using established DDP collection officials. Actual testing of the specimen will be done using a contract laboratory certified by the National Institute of Drug Abuse. As with the current DFWP, all positive drug tests will be verified by the FBI's Medical Review Officer. Thereafter, the case will be referred to the Employee Assistance Program (EAP) and to the Office of Professional Responsibility (OPR) for administrative action.

(2) Certified Breath Alcohol Technicians will conduct alcohol testing. Any employee found over the permissible breath- alcohol limit will be referred to the EAP and to OPR for administrative action.

**1-25.7 Collection Procedures, DFWP**

The following highlights the collection procedure. For complete details of the collection procedure, refer to Section IX of the "Drug Deterrence Program Drug-Free Workplace Policy and Procedure Manual."

(1) Before testing, the collection official will request the individual to be tested (the donor) to present photo identification, if necessary.

(2) Social Security numbers will be used as specimen identifying numbers throughout the collection, shipping and testing phases of the screening to protect the identity of the donor.

(3) Chain of Custody forms shall be used to account for the integrity of each urine specimen by tracking its handling from point of specimen collection to final disposition of the specimen.

(4) Each donor will be escorted by a collection official to the collection area. Same-sex collectors will be used in the instances where collection personnel have reason to believe that the donor may alter or substitute the urine specimen, but are not limited to:

(a) Evidence that employee has tampered with previous specimen.

(b) An individual has equipment, implements, or substances that may be used to tamper with a drug test.

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(5) Donors will be allowed individual privacy when providing specimens unless collection personnel have reason to believe that the donor may alter or substitute the urine specimen or otherwise tamper with the drug test.

**1-25.7.1 Collection Procedures, ACSAP**

The following highlights the collection procedure. For complete details of the collection procedure, refer to Section XI of the Drug Deterrence Program "Alcohol and Controlled Substance Abuse Policy and Procedure Manual."

**(1) Breath Alcohol Testing:**

- (a) Breath Alcohol Testing will be conducted by a Certified Breath Alcohol Technician (BAT).
- (b) Prior to testing, the BAT will request to see the donor's photo identification.
- (c) Social Security numbers will be used as employee identification numbers.
- (d) A Breath Alcohol Testing form will be used to record necessary information.
- (e) The breath testing location will provide aural and visual privacy, sufficient to prevent unauthorized persons from seeing or hearing test results.

**(2) Drug Testing:**

- (a) Drug Collections will be conducted by established DDP Collection Officials (CO's).
- (b) Prior to testing, the CO will request to see the donor's photo identification.
- (c) Social Security numbers will be used as specimen identifying numbers throughout the collection, shipping, and testing phases of the screening to protect the identity of the donor.
- (d) Chain of Custody forms shall account for the integrity of each urine specimen by tracking its handling from point of specimen collection to final disposition of the specimen.
- (e) Each donor will be escorted by a CO to the collection area. Same sex collectors will be used in the instances where collection personnel have reason to believe that the donor may alter or substitute the urine specimen.

**1-25.8 Reporting Procedures, DFWP**

**1-25.8.1 Applicant Testing, DFWP**

(1) All tests confirmed positive for drugs will be reviewed by the FBI's medical review officer (MRO) prior to the initiation of any official action. If the MRO determines, after contacting the donor, that there is no alternate medical explanation for the positive test, the DDP Administrator will be notified. A communication will be immediately prepared by the DDP Administrator identifying the donor and describing the drugs identified upon testing. This communication will be forwarded to the Administrative Services Division (ASD), Attention: Bureau Applicant Employment Unit (BAEU), and will become a permanent part of the applicant record. Upon receiving a communication regarding a verified positive test, the BAEU will immediately notify the field office through which the applicant is being processed to discontinue the processing of that

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applicant. The BAEU will, over the signature of the Personnel Officer, prepare an appropriate letter notifying the applicant that he or she is no longer being considered for employment. (See MIOG, Part 1, 67-2.7.4, for additional notification instructions.)

(2) Inquiries and appeals received from applicants being denied employment with the FBI due to positive drug tests will be handled by the Personnel Officer, ASD. Cases in which illegal drugs, such as marijuana, cocaine, or PCP, were detected will not be given further consideration for employment with the FBI. (Also see MIOG, Part 1, 67-2.7.1, for guidelines for determining applicants' suitability based on their drug history.) In the event that the drug detected was a legitimate prescription drug and the applicant had failed to inform the FBI that he or she was taking such a drug prior to testing, the applicant may appeal to the Personnel Officer, who will refer the appeal to the MRO for review prior to a final decision. Such appeals will be reviewed on an individual basis taking into consideration the verification of the legitimacy of the drug and possible lack of candor on the part of the applicant.

### **1-25.8.2 Testing On-Board Employees, DFWP**

#### **(1) Random Selection and Probationary Testing**

(a) Notification of employees to be tested by random selection and probationary Special Agents within their first two years of employment will be made to field offices and FBIHQ divisions by the FBIHQ DDP. The field office will follow the established collection procedures and forward collected specimens to the testing laboratory.

(b) All examinations confirmed positive for drugs will be reviewed by the FBI's MRO prior to the initiation of any official action. It is the responsibility of the MRO to review all positive test results and medical information provided by the employee for an alternate medical explanation for the positive test. The MRO may interview the employee, review medical history, consult with laboratory personnel and order retesting as determined necessary. If no alternate medical explanation can be determined, the test will be designated a "verified positive" by the MRO.

(c) In the event of a "verified positive" test, the MRO will notify the DDP Administrator who will prepare an appropriate communication outlining the selection procedures and test results. This communication will be forwarded through the Assistant Director, ASD, to the Director, FBI, Attention: Assistant Director, Office of Professional Responsibility (OPR), requesting that the OPR initiate an appropriate investigation.

(d) Investigations conducted by OPR will be conducted in accordance with the FBI regulations regarding investigation of employee misconduct. The results of such investigations will be forwarded to the Adjudication Unit, OPR, for review. The degree of severity of administrative action will be determined on a case-by-case basis.

(e) A copy of the communication prepared for a "verified positive" test will be forwarded to an EAP counselor who will immediately initiate contact with the employee and extend the assistance and rehabilitation services mandated by EO 12564. A letter will be sent by the DDP to the employee outlining the services available and providing names of EAP contacts. This letter will be sent by registered mail, return receipt requested.

#### **(2) Reasonable Suspicion Testing**

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(a) If an employee is suspected of using illegal drugs, the first-line supervisor will gather information, specific facts, and circumstances leading to and supporting this suspicion. This information is then brought to the second-line supervisor who then decides if there is enough documentation to substantiate reasonable suspicion. This information is then brought to the attention of the SAC or division head who will then determine whether to recommend to OPR that an employee be tested. When such a recommendation is made, a written communication will be prepared to include, at a minimum, the appropriate dates and times of reported drug-related incidents, reliable/credible sources of information and any other justification for a test. This communication is to be forwarded to the OPR, FBIHQ. It is the responsibility of the Assistant Director, OPR, or his/her designee to review the facts in each case and to authorize the institution of an investigation and the collection of a urine specimen for testing.

(b) All test results will be forwarded to OPR by the DDP staff after the MRO has conducted the required review to ensure that an alternate medical reason for the presence of a drug does not exist. Where testing is conducted based on reasonable suspicion, the urine specimen will be obtained by a collection official using set collection procedures. Same-sex collectors will be used in the instances where collection personnel have reason to believe that the donor may alter or substitute the urine specimen. A refusal to provide a specimen will be considered refusal to participate in testing, and administrative action for insubordination may be instituted. Following investigation by OPR, the investigative results will be forwarded to the Adjudication Unit which will act upon each case as outlined under random and probationary testing.

(3) Follow-up Testing

(a) Follow-up testing, on an unannounced basis, may be required during or after EAP counseling or rehabilitation up to one year after completion of rehabilitation.

(b) In such cases, the DDP Administrator is authorized, at his/her discretion to initiate the collection of a urine specimen for testing. Thereafter, the reporting procedures will be the same as those detailed for reasonable suspicion testing, including direct observation.

(4) Voluntary Testing

In order to demonstrate their commitment to the FBI goal of a drug-free workplace, employees may volunteer for testing by contacting the DDP Administrator. The DDP Administrator, at his/her discretion, is authorized to initiate the collection of a urine specimen for testing. Thereafter, the reporting procedures will be the same as those detailed for random selection testing.

**1-25.8.3 Reporting Procedures, ACSAP**

(1) Alcohol Testing

(a) Notification of drivers to be tested will be made to field offices and FBIHQ divisions by FBIHQ DDP.

(2) Confirmed Positive Alcohol Tests (Greater Than 0.02, Less Than 0.04)

(a) Commercial Drivers (CDs) having a breath alcohol content greater than 0.02 - .039 will be placed on temporary restriction from performing safety-sensitive functions.

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(b) Management Officials (MOs) shall complete an FD-907, Temporary Restriction Form, and fax the form to the DDP Administrator.

(3) Confirmed Positive Alcohol Test (0.04 or Greater)

(a) In the event the confirmation test reveals an alcohol concentration of 0.04 or greater, the CD shall be placed on full restriction from performing safety-sensitive functions. MOs shall complete an FD-908, Full Restriction Form, and shall fax this information to the DDP Administrator.

(b) The DDP Administrator will prepare an appropriate communication to the Office of Professional Responsibility (OPR), requesting that the Internal Investigation Unit (IIU) initiate an appropriate investigation.

(c) A copy of this communication will be forwarded to an Employee Assistance Counselor who will immediately contact the employee to extend assistance and provide rehabilitation services.

(d) Investigations conducted by OPR will be conducted in accordance with FBI regulations regarding investigations of employee misconduct. The degree of severity of administrative action will be determined on a case-by-case basis, taking into consideration all extenuating or mitigating factors.

(4) Drug Testing

(a) Notification of CDs to be tested will be made to field offices and FBIHQ divisions by FBIHQ DDP.

(b) In the event of a "verified positive" test, the MRO will notify the DDP Administrator who will prepare an appropriate communication of the confirmed positive test. Information regarding the positive test shall be forwarded through the Assistant Director to OPR, requesting that the IIU initiate an appropriate investigation.

(c) A copy of this communication will be forwarded to an Employee Assistance Counselor who will immediately contact the employee to extend assistance and provide rehabilitation services.

(d) Investigations conducted by OPR will be conducted in accordance with FBI regulations regarding investigations of employee misconduct. The degree of severity of administrative action will be determined on a case-by-case basis, taking into consideration all extenuating or mitigating factors.

**1-25.9 Supervisory Responsibilities, DFWP**

(1) All supervisors will be trained to recognize and address illegal drug use by employees and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First- and second-line supervisors shall:

(a) Be responsible for developing reasonable suspicion of illegal drug use by employees under their supervision after first making appropriate factual observations, documenting those observations and obtaining approval from the next higher supervisor or manager;

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- (b) Notify the SAC or division head that reasonable suspicion drug tests may be warranted for employees under their supervision; and
  - (c) Refer employees to the EAP for assistance in obtaining counseling and rehabilitation when there is a finding of illegal drug use.
- (2) The SAC or division head shall:
- (a) Be responsible for developing reasonable suspicion of illegal drug use by a direct subordinate after making factual observations and documenting those facts;
  - (b) Determine whether a request to test for reasonable suspicion should be made to OPR for any employee under his or her supervision; and
  - (c) Ensure that employees under his or her supervision have been referred to the EAP for assistance in obtaining counseling and rehabilitation when there is a finding of illegal drug use.

**1-25.9.1 Supervisory Responsibilities, ACSAP**

- (1) Supervisors will be trained to recognize alcohol and/or drug use and impairment and will be provided information regarding referral of drivers to the EAP, procedures and requirements for alcohol and/or drug testing and behavioral patterns that give rise to a reasonable suspicion that an employee may be using controlled substances an/or misusing alcohol.
- (2) Supervisors shall ensure that Commercial Drivers (CDs) do not perform safety-sensitive functions while taking over-the-counter medications that may impair judgment or motor skills.
- (3) Trained supervisors will be responsible for developing reasonable suspicion of illegal drug and/or alcohol misuse based on specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the driver.
- (4) Supervisors will be responsible for placing drivers on restriction as warranted and shall ensure that drivers under his/her supervision have been referred to the EAP for assistance in counseling and rehabilitation.

**1-25.10 Records and Reports, DFWP**

**1-25.10.1 Confidentiality of Test Results, DFWP**

- (1) Laboratory results will be forwarded to the MRO. Any positive result which the MRO justifies by appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be reported as a negative test result and may not be released for purposes of identifying illegal drug use. The MRO may maintain only those records necessary for compliance with this program and such records shall be the records of the FBI. Records of the MRO may be released to any supervisor or management official having authority to take adverse personnel actions or for purposes of auditing the activities of the MRO.
- (2) In order to comply with the Privacy Act and Section 503(e) of Public Law 100-71, the results of a drug test of an FBI employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be to:

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- (a) The MRO;
- (b) The Employee Assistance Administrator (EAA) when the employee is receiving counseling or treatment or is otherwise participating;
- (c) Any supervisory or management official within the FBI having authority to recommend or approve adverse personnel action against such employee; or
- (d) A court of competent jurisdiction, pursuant to an order of the court, and where required by the United States government to defend against any challenge against any adverse personnel action.

Test results with all identifying information removed shall also be made available to FBI personnel for data collection and auditing.

#### **1-25.10.2 Confidentiality of Records, DFWP**

All drug-testing information specifically relating to individuals is confidential and shall be treated as such by anyone authorized to review or compile program records. All records and information of the personnel actions taken on employees with "verified positive" test results shall be maintained in accordance with previously established procedures in regard to the maintenance of records of alleged employee misconduct.

#### **1-25.10.3 Maintenance of Records, DFWP**

- (1) The FBI shall establish or amend a recordkeeping system to maintain the records of the DDP consistent with the FBI's Privacy Act System of Records and with all applicable federal laws, rules and regulations regarding confidentiality of records.
- (2) If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Director of the FBI. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of legislation and regulations and include:
  - (a) Numbers of "verified positive" test results referred by the MRO;
  - (b) Written material justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;
  - (c) Anonymous statistical reports; and
  - (d) Other documents the DDP Administrator, MRO, or EAA deems necessary for efficient compliance with this program and which satisfy the records and confidentiality requirements of law.

#### **1-25.10.4 Records Maintained by Government Contractors, DFWP**

Any contractor hired to satisfy any part of this program shall comply with the confidentiality requirements of this program, and with all applicable federal laws, rules, regulations and guidelines.

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**1-25.10.5 Statistical Information, DFWP**

The DDP Administrator shall collect and compile anonymous statistical data for reporting the number of:

- (1) Random, reasonable suspicion, follow-up, probationary, voluntary and applicant tests;
- (2) "Verified positive" test results;
- (3) Voluntary drug counseling referrals;
- (4) Involuntary drug counseling referrals; and
- (5) Terminations or denial of employment offers resulting from refusal to submit to testing.

**1-25.10.6 Validity of Preemployment Drug Tests, DFWP**

To ensure the integrity of the DDP, it is essential that all applicant drug tests are done within one year of EOD.

**1-25.10.7 Records and Reports, ACSAP - Confidentiality of Records**

The FBI is required to maintain strict standards of confidentiality in carrying out its responsibilities.

(1) Authorized disclosures - The results of drug and alcohol tests shall not be disclosed without the prior written consent of the CD, unless the disclosure would be:

- (a) To a Medical Review Officer.
- (b) To the Administrator of any EAP in which the employee is receiving counseling or treatment or is otherwise participating.
- (c) To supervisory or management officials having authority to take adverse personnel action against such employee.
- (d) Pursuant to an order of a court of competent jurisdiction where required to defend an adverse personnel action.
- (e) To the National Transportation Safety Board as part of an accident investigation.

(2) Maintenance of records

- (a) The ACSAP will maintain records in a manner consistent with the Privacy Act and all other applicable laws, rules and regulations regarding confidentiality of records.
- (b) Records maintained by government contractors - Any contractor hired to satisfy any part of this program shall comply with the confidentiality requirements of this program and with all applicable federal laws, rules, regulations and guidelines.

**1-25.11 Disciplinary Actions, DFWP**

(1) Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

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- (a) Direct observation;
- (b) Evidence obtained from an arrest or criminal conviction;
- (c) A "verified positive" test result; or
- (d) An employee's voluntary admission.

(2) Administrative Actions

The FBI shall immediately refer an employee found to use illegal drugs to the EAP. The FBI shall initiate action to remove or suspend from service any employee the first time that employee is found to illegally use drugs. However, as part of an EAP rehabilitation program, an employee may remain on duty or return to duty if the employee's continued employment would not endanger public health and safety or national security.

(3) Range of Consequences

In determining the severity of the disciplinary action to be taken against an employee found to use illegal drugs, the FBI may consider the nature of the position, the risk to the public of the employee's illegal drug use, and the employee's personnel and/or performance records. The FBI shall initiate disciplinary action against any employee found to use illegal drugs, provided that such action is not required for an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action may include any of the following measures, but some disciplinary action must be initiated:

- (a) Reprimand the employee in writing;
- (b) Place the employee in an enforced leave status;
- (c) Suspend the employee for 14 days or less;
- (d) Suspend the employee for 15 days or more;
- (e) Suspend the employee until he or she successfully completes the EAP or until the FBI determines that action other than suspension is more appropriate; or
- (f) Dismiss the employee from the FBI.

(4) Initiation of Mandatory Removal From Service

The FBI shall initiate action to dismiss an employee for:

- (a) Refusing to obtain counseling or rehabilitation through the EAP as required by the EO 12564 after having been found to use illegal drugs; or
- (b) Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

(5) Refusal to Take Drug Test When Required

An employee who refuses to be tested when so required will be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. Attempts to alter or

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substitute the specimen provided will be deemed a refusal to take the drug test when required. No applicant who refuses to be tested shall be extended an offer of employment.

(6) Voluntary Referral

(a) Pursuant to EO 12564, the FBI is required to discipline any employee found to use illegal drugs in every circumstance except one: If an employee (1) voluntarily admits his or her drug use; (2) completes counseling and rehabilitation through the EAP; and (3) thereafter refrains from drug use, such discipline is not required and may be waived.

(b) The decision whether to discipline a voluntary referral will be made on a case-by-case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided because of the extreme sensitivity of all FBI positions, the FBI, in determining whether to discipline, shall consider that the employee has come forward voluntarily.

**1-25.11.1 Disciplinary Actions, ACSAP**

(1) Determination - A Commercial Driver (CD) may be found to be engaging in prohibited alcohol and/or drug activity on the basis of appropriate evidence including, but not limited to:

(a) Specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) Evidence obtained from an arrest or criminal conviction.

(c) A verified positive test result.

(d) A driver's voluntary admission.

(2) Administrative action - A CD found to be engaged in prohibited alcohol or drug use shall immediately be referred to the EAP. The FBI shall initiate administrative action to remove or suspend from service any CD the first time that CD is found to be engaging in prohibited activity. If, however, the CD has sought out EAP assistance voluntarily as part of an EAP rehabilitation program, a CD may remain on duty if the CD's continued employment would not endanger public health and safety or national security.

(3) Range of consequences - In determining the severity of the disciplinary action regarding a CD found to be engaged in prohibited alcohol and/or drug use, the FBI will take into consideration all extenuating and mitigating factors, the nature of the position, the risk to the public, and the CD's personnel and/or performance records. The FBI shall initiate disciplinary action against any CD found to use illegal drugs, provided that such action is not required for a CD who voluntarily admits to prohibited alcohol or drug use, obtains counseling or rehabilitation and thereafter refrains from prohibited activity.

(4) Initiation of mandatory removal from service - The FBI shall initiate action to dismiss a CD for:

(a) Refusing to obtain counseling or rehabilitation through the EAP as required after being found to be engaging in prohibited alcohol and/or drug activity.

(b) Having been found not to have refrained from prohibited alcohol and/or drug activity after the first finding.

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(5) Refusal to take alcohol and/or drug tests when required - A CD who refuses to be tested when so required will be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. Attempts to alter or substitute tests will be deemed a refusal. No applicant who refuses to be tested shall be extended an offer of employment.

**1-25.12 Prohibited Activity, ACSAP**

**(1) ALCOHOL**

(a) Alcohol Concentration - No Commercial Driver (CD) shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No supervisor having actual knowledge that a CD has an alcohol concentration of 0.04 or greater shall permit the CD to perform or continue to perform safety-sensitive functions.

(b) Alcohol Possession - No CD shall be on duty or operate a commercial motor vehicle while the CD possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. No supervisor having actual knowledge that a CD possesses unmanifested alcohol may permit the CD to drive or continue to drive a commercial motor vehicle.

(c) On-duty Use - No CD shall use alcohol while performing safety-sensitive functions. No supervisor having actual knowledge that a CD is using alcohol while performing safety-sensitive functions shall permit the CD to perform or continue to perform safety-sensitive functions.

(d) Preduty Use - No CD shall perform safety-sensitive functions within four hours after using alcohol. No supervisor having actual knowledge that a CD has used alcohol within four hours shall permit a CD to perform or continue to perform safety-sensitive functions.

(e) Use Following an Accident - No CD required to take a post-accident alcohol test shall use alcohol for eight hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

(f) Refusal to Submit to a Required Alcohol Test - No CD shall refuse to submit to required alcohol testing under this program. A CD who refuses to be tested will be considered insubordinate and subject to disciplinary action, up to and including dismissal. See Part 1, 1-30.3 of the Manual of Administrative Operations and Procedures (MAOP). Any attempt to alter or substitute an alcohol test will be deemed a refusal to take the alcohol test when required.

**(2) DRUGS**

(a) Controlled Substance Use - No CD shall perform safety-sensitive functions when the CD uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the CD that the substance does not adversely affect the ability to safely operate a CMV. The CD must notify his/her Management Official (MO), division head or SAC of any condition or drug use which may impair his/her fitness for full duty.

(b) Over-the-Counter Medications - No CD shall perform safety-sensitive functions while taking over-the-counter medications that may impair judgment or motor skills. The CD must notify his/her MO, SAC, or division head of any condition or medication which may impair his/her fitness for full duty.

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- (c) Positive Drug Test - No CD who has tested positive for controlled substances shall be permitted to perform or continue to perform safety-sensitive functions pending completion of administrative action.
- (d) Refusal to Submit to a Required Drug Test - No CD shall refuse to submit to a drug test under this program. A CD who refuses testing shall be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. See Part 1, Section 13 of the MAOP. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.
- (e) On-duty Use - No MO, SAC or division head having actual knowledge that a CD has used a controlled substance or an over-the-counter medication, as defined by above, shall permit the CD to perform or continue to perform a safety-sensitive function.

## **1-26 POLICY AND GUIDELINES REGARDING EMPLOYEE PUBLIC SPEECH RIGHTS AND OBLIGATIONS**

### **1-26.1 General Statement**

- (1) This policy is intended to inform FBI employees of their rights and obligations prior to engaging in public speech that is or may be perceived as related to the duties, responsibilities or administration of the FBI. FBI employees enjoy rights protected by the First Amendment, including freedom of expression. However, the FBI has interests as an employer in regulating the speech of its employees that may affect its mission.
- (2) This policy seeks to balance the interests of FBI employees in commenting publicly upon matters of public concern, on the one hand, and the interests of the FBI, as their employer, in promoting efficiency and effectiveness in the discharge of its responsibilities, on the other.
- (3) The policy and guidance provided herein is based on an analysis of cases decided in the state and Federal courts under the First Amendment. It is founded on generally accepted principles of First Amendment law which address the rights and obligations of public employees who desire to engage in public comment.
- (4) Public comment or speech as referred to in this section includes, but is not limited to, interviews given members of the media or others knowing that it is intended to be used in magazines or other publications, letters to editors, and contacts with Congress, its committees and investigative arms.
- (5) Any questions concerning the implementation or application of this policy should be directed to the National Press Office, Office of Public and Congressional Affairs, FBIHQ.

### **1-26.2 Types of Employee Public Speech**

- (1) Public Speech Regarding Matters Unrelated to FBI Employment
  - (a) FBI employees ordinarily may speak publicly about matters unrelated to their employment if they are expressing their personal views. However, when speaking publicly about such matters, employees should make clear that they are stating their personal opinion, not the opinion of the FBI and not their official opinion as an employee of the FBI. Particular care in this regard should be taken if the employee is somehow identified as an FBI employee. For example, an employee may

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wish to publicly comment on topical social issues, school board issues or other similar matters. Such speech is deemed unrelated to FBI employment and protected under the First Amendment so long as the employee solely and clearly expresses his/her opinions as an individual.

(b) Employees' speech regarding matters unrelated to their employment is subject to the general guidance contained in Title 28, Code of Federal Regulations, entitled "Standards of Conduct" and in Departmental Order 960-81 (10/26/81), which provides that employees shall conduct themselves in a manner that creates and maintains respect for the DOJ and the United States Government.

(2) Public Speech Regarding Issues Closely Related to FBI Mission

(a) Certain matters of significant public concern may be so closely related to the responsibilities and mission of the FBI as to create a substantial likelihood that personal comments on such matters by FBI employees would be perceived as reflecting their official views as FBI employees or the views of the agency. Employee comments regarding such matters as whether use of certain controlled substances should be legalized, whether the Government should punish certain crimes by use of capital punishment or whether a certain criminal statute is constitutional and enforceable are examples of when such misperceptions might occur. When speaking about matters closely related to the responsibilities and mission of the FBI, employees have an obligation to make absolutely clear that they are expressing their personal opinions. Further, certain employees may be precluded from stating publicly their personal opinions on a particular matter. For example, it may be inappropriate for a senior FBI official to express publicly his/her personal view regarding matters within the investigative jurisdiction of the FBI. This is because, as a practical matter, others may perceive the personal views of a senior management employee possessing substantial policy-making authority as indistinguishable from his/her official position as a senior FBI manager. The public expression of personal views in such situations could undermine the ability of the FBI to enunciate official policy or to remain neutral on some issues.

(b) Employees should be alert to situations in which the public expression of their personal views on matters closely related to the responsibilities or mission of the FBI may be perceived as expressing the official views of FBI employees. When such circumstances are identified, the employee should seek guidance from his/her immediate supervisor or division head.

(3) Public Speech Regarding FBI Enforcement Operations or Investigations

(a) Employee public speech regarding specific FBI enforcement operations or investigations is subject to relatively strict regulation. The FBI's policy and guidelines for contact with the news media are contained in the Manual of Administrative Operations and Procedures (MAOP), Part II, Section 5. That section requires that all inquiries by representatives of the news media concerning information under the control of the FBI be referred to designated media representatives of the field office or the National Press Office, FBIHQ. Additionally, disclosure of certain types of information, such as classified information or information relating to pending criminal investigations, may be unlawful or regulated by statute, rule or regulation. Therefore, FBI employees must not publicly comment on investigations or enforcement operations unless authorized to do so.

(4) Public Speech Regarding FBI Administration, Personnel Practices or Disciplinary Matters

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(a) Employee public speech concerning the administration of the FBI in matters such as investigative programs, personnel practices and procedures, disciplinary matters, the conduct or integrity of its managers and other matters has the potential to undermine the discipline, efficiency, and effectiveness of the agency. Such speech may also affect morale, weaken or destroy necessary working relationships and erode public confidence in the agency. Though public comment on matters such as corruption or racial discrimination may have significant public value, such speech must nonetheless be balanced against the concerns and interests of the Bureau, such as those discussed above. If the public value of the speech outweighs the interests of the FBI, the speech is protected under the First Amendment and may not be the basis for discipline against an employee.

(b) The FBI may effectively address an employee's work-related concerns only if the employee brings the matter to the attention of appropriate supervisory personnel. Therefore, employees are required to express their work-related comments and criticisms to their immediate supervisor, division head, or an appropriate ombudsman at least seven days prior to commenting publicly about such a matter. This rule is not intended to require that an employee in each case obtain the approval of his/her supervisor prior to commenting publicly on a matter he/she believes is of public concern. The rule is, however, intended to accomplish several objectives. First, it will notify the employee's supervisor that the employee believes that a grievance or an issue warrants his/her speaking out publicly. Second, it will assist in channeling the employee's comments and criticisms to the appropriate supervisors, who can then investigate and seek to resolve the matter. Third, it enables supervisors to alert the employee that his/her intended public statement may be inappropriate or impermissible, based upon a balancing of the employee's First Amendment right to comment upon matters of public concern and the FBI's legitimate interests in effectively managing the agency.

(c) If after seven days, the employee still desires to publicly comment on the matter, the employee must notify his/her SAC or Assistant Director of the intent to do so. The SAC or Assistant Director must, in turn, notify the Office of Public and Congressional Affairs.

(5) Speech Protected Under the FBI "Whistleblower" Statute

(a) Federal law expressly prevents the FBI from engaging in adverse employment actions or reprisal against most employees who disclose to the Attorney General, the Department of Justice Office of Professional Responsibility, or the FBI Office of Professional Responsibility, information which is reasonably believed to evidence a violation of law, rule, or regulation; mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. See, Title 5, United States Code, Section 2303; Title 28, Code of Federal Regulations, Section 0.39(c); MAOP, Part I, Section 1-23.1.

(b) Employees who possess such information and bring it to the attention of the Department of Justice or the FBI under the procedures set forth in paragraph (4), above, before making public comment on it will be considered to have complied with and be protected under this statute.

**1-26.3 Factors Determining Appropriateness of Employee Public Speech**

Applicable law regarding the necessary balancing of an employee's First Amendment right to speak publicly regarding a matter of public concern and an agency's legitimate law enforcement interests is complex. It is not possible to list all of the factors that would be considered in determining

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whether to counsel an employee that his/her proposed public statements may be inappropriate and, therefore, possibly subject the employee to discipline, or whether to discipline an employee for making such comments. However, the following factors are among those that would be considered in determining whether disciplinary action would be appropriate:

- (1) The speech violated a specific provision of FBI policy or DOJ regulation (e.g., it concerned a particular FBI investigation and was made by an unauthorized employee).
- (2) The speech related only to a personal internal grievance of the employee or other matter that did not implicate a significant public concern. For example, an employee's concern about his/her performance appraisal report, or failure to receive a particular bonus or award is generally a personal matter which does not involve political, social or community concerns and would not, absent other significant factors, constitute protected speech.
- (3) The speech compromised or contained classified or sensitive information relating to an investigation or administrative matter.
- (4) The public comment was delivered in an intemperate, offensive, caustic or unprofessional manner. For example, if the speech identifies a specific fellow employee or supervisor by name or position and characterizes that person in an intemperate manner as a racist, thief or bigot, the manner of such speech may subject the employee to discipline.
- (5) The speech interfered with a pending civil, criminal, personnel or administrative proceeding.
- (6) The level and responsibility of the employee and his/her concomitant obligation to support FBI management and its policies. Generally, as employees gain higher positions in the FBI's supervisory and management ranks, there is a corresponding higher duty of loyalty to publicly support FBI policies and executives. The failure to do so, particularly by one who holds a supervisory or management position, can increase the degree of harm to the efficiency and effectiveness to FBI operations and administration.
- (7) The employee criticized another employee or supervisor in a way that undermined discipline or a close working relationship.
- (8) The employee made the comments knowing they were false, or with reckless disregard for their truth or falsity.
- (9) The employee failed without sufficient cause to use the required seven-day notice of intended public comment.
- (10) The speech constituted a disclosure of information prohibited by law. For example, public disclosure of information governed by the Privacy Act, Title 5, United States Code, Section 552a, or Rule 6(e), Federal Rules of Criminal Procedure, could lead to disciplinary action as well as possibly subjecting the employee to potential criminal, civil, or contempt of court sanctions.

#### **1-26.4 Existing Procedures**

- (1) Part I of the MAOP contains procedures for addressing certain matters of interest and/or concern to FBI employees. Section 14 establishes a grievance system for the orderly and effective resolution of employee grievances. Section 3 contains procedures relating to Special Agent Career

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Development Matters, and Section 4 contains procedures relating to Equal Employment/Upward Mobility matters. Employees are encouraged to use these established mechanisms for the resolution of their concerns and grievances.

(2) Employees are also reminded of their obligation under FBI and Department of Justice policies and regulations to submit any written product for which they seek publication to the Office of Public and Congressional Affairs for review prior to publication. See, MAOP, Part I, Section 1-24; Title 28, Code of Federal Regulations, Section 17.144."

### **1-26.5 Guidelines on Religious Freedom in the Federal Workplace**

The following Guidelines, addressing religious exercise and religious expression, shall apply to all civilian executive branch agencies, officials, and employees in the federal workplace. These Guidelines principally address employees' religious exercise and religious expression when the employees are acting in their personal capacity within the federal workplace and the public does not have regular exposure to the workplace. The Guidelines do not comprehensively address whether and when the government and its employees may engage in religious speech directed at the public.

#### **(1) GUIDELINES FOR RELIGIOUS EXERCISE AND RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE**

Executive departments and agencies shall permit personal religious expression by federal employees to the greatest extent possible, consistent with the Religious Freedom Restoration Act (Title 42, USC, Section 2000bb-1) and Title VII of the Civil Rights Act of 1964 (Title 42, USC, Section 2000e et seq.), as amended and interests in workplace efficiency as described in this set of Guidelines. Agencies shall not discriminate against employees on the basis of religion, require religious participation or nonparticipation as a condition of employment, or permit religious harassment. Agencies shall accommodate employees' exercise of their religion in the circumstances specified in these Guidelines. These requirements are but an application of the general principle that agencies shall treat all employees with the same respect and consideration, regardless of their religion (or lack thereof).

(a) Religious Expression. As a matter of law, agencies shall not restrict personal religious expression by employees in the federal workplace except where the employees' interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion.

As a general rule, agencies may not regulate employees' personal religious expression on the basis of its content or viewpoint. In other words, agencies generally may not suppress employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics. To do so would be to engage in presumptively unlawful content or viewpoint discrimination. Agencies, however, may, in their discretion, reasonably regulate the time, place, and manner of all employee speech, provided such regulations do not discriminate on the basis of

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content or viewpoint. The federal government generally has the authority to regulate an employee's private speech, including religious speech, where the employee's interest in that speech is outweighed by the government's interest in promoting the efficiency of the public services it performs. Agencies should exercise this authority evenhandedly and with restraint, and with regard for the fact that in some cultures it is not appropriate to disagree on controversial subjects, including religious ones. Agencies are not required, however, to permit employees to use work time to pursue religious or ideological

agendas. Federal employees are paid to perform official work, not to engage in personal, religious, or ideological campaigns during working hours.

(2) EXPRESSION IN PRIVATE WORK AREAS

Employees should be permitted to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint- neutral standards and restrictions: such religious expression must be permitted so long as it does not interfere with the agency's performance of its official responsibilities.

(a) Expression Among Fellow Employees. Employees should be permitted to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content- neutral standards and restrictions. Such expression should not be restricted so long as it does not interfere with workplace efficiency. Though agencies are entitled to regulate such employee speech based on reasonable predictions of disruption, they should not restrict speech based on merely hypothetical concerns, having little basis in fact, that the speech will have a deleterious effect on workplace efficiency.

(3) EXPRESSION DIRECTED AT FELLOW EMPLOYEES

(a) Employees are permitted to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion. Some religions encourage adherents to spread the faith at every opportunity, a duty that can encompass the adherent's workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech -- as long as a reasonable observer would not interpret the expression as government endorsement of religion. Employees may urge a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors. But employees must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome.

(b) Though personal religious expression is protected in the same way, and to the same extent, as other constitutionally valued speech in the federal workplace, such expression should not be permitted if it is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker. Such speech, by virtue of its excessive or harassing nature, may constitute religious harassment or create a hostile work environment and an agency should not tolerate it.

(4) EXPRESSION IN AREAS ACCESSIBLE TO THE PUBLIC

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(a) Where the public has access to the federal workplace, all federal employers must be sensitive to the Establishment Clause's requirement that expression not create the reasonable impression that the government is sponsoring, endorsing, or inhibiting religion generally, or favoring or disfavoring a particular religion. This is particularly important in agencies with adjudicatory functions.

(b) However, even in workplaces open to the public, not all private employee religious expression is forbidden. For example, federal employees may wear personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry. Employees may also display religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in his/her personal capacity, and not that of the government itself. Similarly, in their private time employees may discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities.

(5) RELIGIOUS DISCRIMINATION

Federal agencies may not discriminate against employees on the basis of their religion, religious beliefs, or views concerning religion.

(a) Discrimination in Terms and Conditions. No agency within the executive branch may promote, refuse to promote, hire, refuse to hire, or otherwise favor or disfavor, an employee or potential employee because of his or her religion, religious belief, or views concerning religion.

(b) Coercion of Employees' Participation or Nonparticipation in Religious Activities. A person holding supervisory authority over an employee may not, explicitly or implicitly, insist that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment. Nor may a supervisor insist that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (e.g., restrictions on political activities prohibited by the Hatch Act).

1. This prohibition leaves supervisors free to engage in some kinds of speech about religion. Where a supervisor's religious expression is not coercive and is understood as his or her personal view, that expression is protected in the federal workplace in the same way and to the same extent as other constitutionally valued speech. For example, if surrounding circumstances indicate that the expression is merely the personal view of the supervisor and that employees are free to reject or ignore the supervisor's point of view or invitation without any harm to their careers or professional lives, such expression is so protected.

2. Because supervisors have the power to hire, fire, or promote, employees may reasonably perceive their supervisor's religious expression as coercive, even if it was not intended as such. Therefore, supervisors should be careful to ensure that their statements and actions are such that employees do not perceive any coercion of religious or nonreligious behavior (or respond as if such coercion is occurring), and should, where necessary, take appropriate steps to dispel such misperceptions.

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(c) Hostile Work Environment and Harassment. The law against workplace discrimination protects federal employees from being subjected to a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers. Whether particular conduct gives rise to a hostile environment, or constitutes impermissible religious harassment, will usually depend upon its frequency or repetitiveness, as well as its severity. The use of derogatory language in an assaultive manner can constitute statutory religious harassment if it is severe or invoked repeatedly. A single incident, if sufficiently abusive, might also constitute statutory harassment. However, although employees should always be guided by general principles of civility and workplace efficiency, a hostile environment is not created by the bare expression of speech with which some employees might disagree. In a country where freedom of speech and religion are guaranteed, citizens should expect to be exposed to ideas with which they disagree.

(6) ACCOMMODATION OF RELIGIOUS EXERCISE

(a) Federal law requires an agency to accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship nevertheless must be real rather than speculative or hypothetical. The accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law.

(b) In addition, religious accommodation cannot be disfavored as compared with other, nonreligious accommodations. Therefore, a religious accommodation cannot be denied if the agency regularly permits similar accommodations for nonreligious purposes.

(c) In those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, the agency must go further. An agency should grant the employee an exemption from that rule, unless the agency has a compelling interest in denying the exemption, and there is no less restrictive means of furthering that interest.

(7) ESTABLISHMENT OF RELIGION

Supervisors and employees must not engage in activities or expression that a reasonable observer would interpret as either government endorsement or denigration of religion or a particular religion. Activities of employees need not be officially sanctioned in order to violate this principle; if, in all the circumstances, the activities would leave a reasonable observer with the impression that government was endorsing, sponsoring, or inhibiting religion generally or favoring or disfavoring a particular religion, they are not permissible. Diverse factors, such as the context of the expression or whether official channels of communication are used, are relevant to what a reasonable observer would conclude.

(8) GUIDING LEGAL PRINCIPLES

In applying the guidance set forth in this order, executive branch departments and agencies should be advised of the following legal principles.

(a) Religious Expression. It is well-established that the Free Speech Clause of the First Amendment protects government employees in the workplace. This right encompasses a right to speak about

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religious subjects. The Free Speech Clause also prohibits the government from singling out religious expression for disfavored treatment: "Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression," *Capitol Square Review Board v. Pinette*, 115 S.Ct. 2448 (1995). Accordingly, in the government workplace, employee religious expression cannot be regulated because of its religious character, and such religious speech typically cannot be singled out for harsher treatment than other comparable expression.

1. Many religions strongly encourage their adherents to spread the faith by persuasion and example at every opportunity, a duty that can extend to the adherent's workplace. As a general matter, proselytizing is entitled to the same constitutional protection as any form of speech. Therefore, in the governmental workplace, proselytizing should not be singled out because of its content for harsher treatment than nonreligious expression.

2. However, it is also well-established that the government in its role as employer has broader discretion to regulate its employees' speech in the workplace than it does to regulate speech among the public at large. Employees' expression on matters of public concern can be regulated if the employees' interest in the speech is outweighed by the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees. Governmental employees also possess substantial discretion to impose content-neutral and viewpoint-neutral time, place, and manner rules regulating private employee expression in the workplace (though they may not structure or administer such rules to discriminate against particular viewpoints). Furthermore, employee speech can be regulated or discouraged if it impairs discipline by superiors, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise, or demonstrates that the employee holds views that could lead his/her employer or the public reasonably to question whether he/she can perform his/her duties adequately.

3. Consistent with its fully protected character, employee religious speech should be treated within the federal workplace, like other expression on issues of public concern. In a particular case, an employer can discipline an employee for engaging in speech if the value of the speech is outweighed by the employer's interest in promoting the efficiency of the public services it performs through its employee. Typically, however, the religious speech cited as permissible in the various examples included in these guidelines will not unduly impede these interests and should not be regulated. And rules regulating employee speech, like other rules regulating speech, must be carefully drawn to avoid any unnecessary limiting or "chilling" of protected speech.

(b) Discrimination in Terms and Conditions. Title VII of the Civil Rights Act of 1964 makes it unlawful for employers, both private and public, to "fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's ... Religion." 42 U.S.C. Section 2000e-2(a)(1). The federal government also is bound by the equal protection component of the Due Process Clause of the Fifth Amendment, which bars intentional discrimination on the basis of religion. Moreover, the prohibition on religious discrimination in employment applies with particular force to the federal government, for Article VI, Clause 3 of the Constitution bars the government from enforcing any religious test as a requirement for qualification to any office. In

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addition, if a government law, regulation or practice facially discriminates against employees' private exercise of religion or is intended to infringe upon or restrict private religious exercise, then that law, regulation, or practice implicates the Free Exercise Clause of the First Amendment. Last, under the Religious Freedom Restoration Act, 42 U.S.C. Section 2000bb-1, federal governmental action that substantially burdens a private party's exercise of religion can be enforced only if it is justified by a compelling interest and is narrowly tailored to advance that interest.

(c) Coercion of Employees' Participation or Nonparticipation in Religious Activities. The ban on religious discrimination is broader than simply guaranteeing nondiscriminatory treatment in formal employment decisions such as hiring and promotion. It applies to all terms and conditions of employment. It follows that the federal government may not require or coerce its employees to engage in religious activities or to refrain from engaging in religious activity. For example, a supervisor may not demand attendance at (or a refusal to attend) religious services as a condition of continued employment or promotion, or as a criterion affecting assignment of job duties. Quid pro quo discrimination of this sort is illegal. Indeed, wholly apart from the legal prohibitions against coercion, supervisors may not insist upon employees' conformity to religious behavior in their private lives any more than they can insist on conformity to any other private conduct unrelated to employees' ability to carry out their duties.

(d) Hostile Work Environment and Harassment. Employers violate Title VII's ban on discrimination by creating or tolerating a "hostile environment" in which an employee is subject to discriminatory intimidation, ridicule, or insult sufficiently severe or pervasive to alter the conditions of the victim's employment. This statutory standard can be triggered, at the very least, when an employee because of her or his religion or lack thereof, is exposed to intimidation, ridicule, and insult. The hostile conduct - which may take the form of speech - need not come from supervisors or from the employer. Fellow employees can create a hostile environment through their own words and actions.

1. The existence of some offensive workplace conduct does not necessarily constitute harassment under Title VII. Occasional and isolated utterances of an epithet that engenders offensive feelings in an employee typically would not affect conditions of employment, and therefore would not in and of itself constitute harassment. A hostile environment, for Title VII purposes, is not created by the bare expression of speech with which one disagrees. For religious harassment to be illegal under Title VII, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Whether conduct can be the predicate for a finding of religious harassment under Title VII depends on the totality of the circumstances, such as the nature of the verbal or physical conduct at issue and the context in which the alleged incidents occurred. As the Supreme Court has said in an analogous context:

Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

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2. The use of derogatory language directed at an employee can rise to the level of religious harassment if it is severe or invoked repeatedly. In particular, repeated religious slurs and negative religious stereotypes, or continued disparagement of an employee's religion or ritual practices, or lack thereof, can constitute harassment. It is not necessary that the harassment be explicitly religious in character or that the slurs reference religion. It is sufficient that the harassment is directed at an employee because of the employee's religion or lack thereof. That is to say, Title VII can be violated by employer tolerance of repeated slurs, insults and/or abuse not explicitly religious in nature if that conduct would not have occurred but for the targeted employee's religious belief or lack of religious belief. Finally, although proselytization directed at fellow employees is generally permissible (subject to the special considerations relating to supervisor expression discussed elsewhere in these Guidelines,) such activity must stop if the listener asks that it stop or otherwise demonstrates that it is unwelcome.

(e) Accommodation of Religious Exercise. Title VII requires employers "to reasonably accommodate..... an employee's or prospective employee's religious observance or practice" unless such accommodation would impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. Section 2000e(j). For example, by statute, if an employee's religious beliefs require him/her to be absent from work, the federal government must grant that employee compensation time for overtime work to be applied against the time lost, unless to do so would harm the ability of the agency to carry out its mission efficiently. 5 U.S.C. Section 5550a.

1. Though an employer need not incur more than de minimis costs in providing an accommodation, the employer hardship nevertheless must be real rather than speculative or hypothetical. Religious accommodation cannot be disfavored relative to other, nonreligious, accommodations. If an employer regularly permits accommodation for nonreligious purposes, it cannot deny comparable religious accommodation: "Such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 71 (1986).

2. In the federal government workplace, if neutral workplace rules - that is, rules that do not single out religious or religiously motivated conduct for disparate treatment - impose a substantial burden on a particular employee's exercise of religion, the Religious Freedom Restoration Act requires the employer to grant the employee an exemption from that neutral rule, unless the employer has a compelling interest in denying an exemption and there is no less restrictive means of furthering that interest. 42 U.S.C. Section 2000bb-1.

(f) Establishment of Religion. The Establishment Clause of the First Amendment prohibits the government including its employees from acting in a manner that would lead a reasonable observer to conclude that the government is sponsoring, endorsing or inhibiting religion generally or favoring or disfavoring a particular religion. For example, where the public has access to the federal workplace, employee religious expression should be prohibited where the public reasonably would perceive that the employee is acting in an official, rather than a private, capacity, or under circumstances that would lead a reasonable observer to conclude that the government is endorsing or disparaging religion. The Establishment Clause also forbids federal employees from using government funds or resources (other than those facilities generally available to government employees) for private religious uses.

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(9) GENERAL

These Guidelines shall govern the internal management of the civilian executive branch. They are not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Questions regarding interpretations of these Guidelines should be brought to the Office of the General Counsel.

**1-27 SERVICE AS AN EXPERT WITNESS**

(1) Restriction. An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (3) of this section.

(2) Authorization to serve as an expert witness. Provided that the employee's testimony will not result in compensation for an appearance in violation of 5 CFR 2636.201 or violate any of the principles or standards set forth in the Office of Government Ethics standards of conduct, authorization to provide expert witness service otherwise prohibited by paragraph (1) of this section may be given by the Designated Agency Ethics Official of the agency in which the employee serves when:

(a) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the Designated Agency Ethics Official determines that the employee's service as an expert witness is in the interest of the Government; or

(b) The Designated Agency Ethics Official determines that if the subject matter of the testimony does or does not relate to the employee's official duties as defined in MAOP, Part I, Section 1-16.1.

(3) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority. (See (1).)

**1-28 STANDARDS OF ETHICAL CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES ON DETAIL OUTSIDE THE FBI (See MAOP, Part I, 1-1 (6).)**

(1) DETAILS TO OTHER AGENCIES: Except as provided in paragraph (4) of this section, an employee on detail to another agency for a period in excess of 30 calendar days shall remain subject to the Office of Government Ethics (OGE) standards of conduct codified at 5, CFR, Part 2635, and shall be subject to any supplemental agency regulations to the OGE standards of conduct of the agency to which he/she is detailed rather than to any supplemental agency regulations of his/her employing agency.

(2) DETAILS TO THE LEGISLATIVE OR JUDICIAL BRANCH: An employee on detail to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the OGE standards of conduct, except this section, or, except as provided in paragraph (4) of this section, to any supplemental agency regulations of

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his/her employing agency, but shall remain subject to the conflict of interest prohibitions in Title 18 of the United States Code.

(3) DETAILS TO NON-FEDERAL ENTITIES: Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to the OGE standards of conduct, the FBI standards of conduct and any supplemental agency regulation of the FBI. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the Designated Agency Ethics Official may grant a written exemption from the restrictions of 5, CFR, subsections 2635.201 - 2635.205, based on his/her determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(4) APPLICABILITY OF SPECIAL AGENCY STATUTES: Notwithstanding paragraphs (1) and (2) of this section, an employee who is subject to an agency statute which restricts his/her activities or financial holdings specifically because of his/her status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his/her employing agency that implement that statute.

(5) The Department of Justice has submitted and obtained preliminary approval of the following supplemental regulation to the OGE standards of conduct:

Any employee of the Federal Bureau of Investigation or the Drug Enforcement Administration who is subject to any supplemental regulations or standards of ethical conduct by reason of detail or assignment from his/her component to any other entity shall also remain subject to the supplemental regulations and/or standards of ethical conduct of the Department of Justice (including, without limitation, his/her component's internal standards and guidelines, if any); provided, however, that in case of conflict between applicable supplemental regulations and/or standards of ethical conduct, the more restrictive shall govern and control.

**1-29 Deleted** (See *Security Policy Manual* at [http://rmd.fbinet.fbi/ppu/manuals-desk/manuals\\_published\\_in\\_new\\_format.htm](http://rmd.fbinet.fbi/ppu/manuals-desk/manuals_published_in_new_format.htm))

## **1-30 ALCOHOL POLICY (SEE MAOP, PART I, 1-2.)**

### **1-30.1 Background and Purpose (See MAOP, Part I, 1-2 and 15-3.3.)**

In, September, 1994, the Director personally reviewed incidents involving employees having been criminally charged with Driving Under the Influence (DUI) of alcohol to determine the FBI's response to the problem posed by alcohol abuse within the FBI. He was convinced that it was necessary to firmly promulgate the FBI's policy regarding alcohol-related misconduct and, in particular, to establish harsh consequences for anyone who operates a motor vehicle while under the influence of alcohol. He addressed the problem both from a preventive and disciplinary standpoint. The policy set forth below, in 1-30.2 through 1-30.4, should in no way be construed to indicate any lack of sensitivity to problems faced by FBI employees or any lessening in his strong endorsement of our Employee Assistance Program (EAP).

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**1-30.2 Statement of Policy (See MAOP, Part I, 1-2, 1-30.1 and 15-3.3.)**

(1) It has long been the policy of the FBI to forbid employees to consume alcohol while "on duty." This prohibition is closely tied to the role of FBI Special Agents as law enforcement officers and the perception of the American public that our organization should serve as a role model for law enforcement. With limited exceptions necessary for Special Agents in certain undercover or surveillance assignments, the requirement for all employees to abstain from alcohol during duty hours is reaffirmed.

(2) Special Agents are expected to be available for duty on a 24-hour basis. Consequently, they must take affirmative steps to remain fit for duty at all times.

(3) Every employee is strongly recommended to take steps to avoid operating a motor vehicle after consumption of any alcoholic beverages. Steps such as making prior arrangements for a designated driver at social events are not only a prudent but reasonable course of action which should be taken by all employees despite the minor inconvenience which may be involved.

(4) All employees must redouble their efforts -- as coworkers, as "brick agents" and as supervisors and managers -- to intervene directly to assist those who need EAP help. We must ensure that employees plagued by substance abuse do not endanger themselves, their families, fellow employees, or the public we have all sworn to protect. We must not tolerate or seek to hide problems such as alcoholism which so gravely threaten members of our Bureau or the public's safety.

**1-30.3 Alcohol-Related Misconduct (See MAOP, Part I, 1-2, 1-3.1, 1-30.1, 8-1.12.2, 12-1.5, 13-13 and 15-3.3.)**

In the interest of public safety and the Bureau's integrity, the FBI is obligated to take severe administrative action for alcohol-related misconduct. Employees must be held accountable for their on- and off-duty alcohol-related misconduct, WHETHER OR NOT they are specifically charged with an alcohol-related offense by a local law enforcement agency.

(1) Upon an employee's FIRST offense of driving under the influence or while intoxicated, whether established by a conviction in court or as the result of an administrative inquiry, he/she will be suspended from duty, without pay, for a period of not less than 30 days. If aggravating circumstances are present, he/she may be terminated from employment. A SECOND offense will result in termination, absent compelling mitigating circumstances.

(2) Immediately following an employee's arrest for driving while under the influence (DUI) or while intoxicated (DWI), an employee will be prohibited by his/her division/office head from operating a government motor vehicle for an indefinite period of time. This indefinite suspension of an employee's privilege to operate a government motor vehicle will continue until an administrative determination has been reached regarding the employee's guilt or innocence of the alleged misconduct. In such matters, renewal of an employee's privilege to operate a government motor vehicle will be resolved by an administrative determination of the Bureau made in association with adjudication of employee's alleged misconduct. While the result of a judicial review of the employee's actions, his/her plea bargaining, or entry into a diversion or substance abuse program as a result of his/her arrest will be considered in reaching this administrative determination, such



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factor(s) will NOT, in and of themselves, determine the appropriateness of the Bureau's renewal of an employee's privilege to operate a government motor vehicle. That decision will be made on the merits of each case and the government's responsibility to ensure the public's safety through proper licensing of the operator of official motor vehicles.

(3) An employee's arrest for driving while under the influence or while intoxicated MUST be reported to the Office of Professional Responsibility (OPR) as an issue of serious misconduct. An administrative inquiry will be conducted by the division/office head under the direction of OPR regarding the employee's alleged misconduct. Sufficient information/evidence must be obtained in this inquiry to facilitate an administrative determination of the employee's guilt or innocence of the noted charge. Such information should include, but not be limited to, the result of the adjudication of the employee's arrest by the judicial system in which charges were filed against the employee.

(4) In those instances in which an employee is found guilty in an administrative inquiry of alcohol-related misconduct while operating a motor vehicle, his/her privilege to operate a government motor vehicle will continue to be suspended following such determination of guilt. This suspension will occur REGARDLESS whether the nature of the employee's motor vehicle offense has been reduced as a result of judicial review, plea bargaining, or the employee's entry into a diversion or substance abuse program. A presumption will exist that there is a necessity to suspend the employee's privilege to operate a government motor vehicle for a period of not less than ONE YEAR following his/her offense. During the period of a Special Agent's suspension of his/her privilege to operate a government motor vehicle, and following a determination of his/her alcohol-related misconduct by the Bureau, he/she will NOT be considered eligible to earn premium compensation, such as Sunday pay, holiday pay, night differential, and Availability Pay. Prior to discontinuing eligibility for Availability Pay, the employee will be afforded appropriate adverse action proceedings. (See MAOP, Part I, 1-3.1 and 8-1.12.2.)

(5) As the suspension of a Special Agent's entitlement to earn Availability Pay compensation is an adverse personnel action, it is dependent upon completion of adverse action procedures set forth in, MAOP, Part I, 13-14. These procedures are designed to afford employees due process as well as procedural entitlements which arise from an employee's personnel status. For example, a preference-eligible veteran has specific procedural entitlements which are set forth in MAOP, Part I, 13-10.

(6) When suspension of an employee's privilege to operate a government motor vehicle is continued as a result of an adverse personnel action, it will be the responsibility of a division/office head to determine the extent to which the employee's privilege to operate a government motor vehicle will be suspended. In reaching that determination in alcohol misconduct cases involving the use of a motor vehicle, a presumption will exist that there is a necessity to suspend the employee's privilege to operate a government motor vehicle for a PERIOD OF NOT LESS THAN ONE YEAR following the occurrence of the offense. Any reduction of that period must be fully justified by the division/office head on the merits of the case involved. Such a determination must be documented in the employee's official personnel file. Any continuation of the period of suspension of a Special Agent's privilege to operate a government motor vehicle beyond one year from date of the offense, which has predicated suspension of his/her entitlement to Availability Pay, will require the initiation of a SEPARATE adverse personnel action. Such an action may be requisite in situations

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in which a Special Agent fails to comply with a program of rehabilitation determined necessary by his/her fitness for duty examination, or other appropriate cause.

(7) When an FBI employee is involved in alcohol-related misconduct, REGARDLESS WHETHER THAT MISCONDUCT IS ASSOCIATED WITH OPERATION OF A MOTOR VEHICLE, his/her division head, in addition to notifying OPR, will conduct an inquiry specifically focused on whether the employee suffers from alcohol-related problems. The result of that inquiry will be documented in the employee's official personnel file.

(a) If the inquiry determines that the employee is experiencing an alcohol-related problem, the division/office head will instruct the employee to seek counseling and/or assistance through the EAP or some outside source.

(b) Employees subject to a medical standard for fitness for duty - such as Special Agents - who are suspected to have an alcohol abuse problem, will be referred for a fitness for duty exam. This examination will confirm whether the problem exists, and, if appropriate, will enable management to refer the employee through EAP for professional treatment and assistance. In addition, it will facilitate the Bureau's issuance of a notice to employees with alcohol abuse problems to avoid misconduct/performance deficiencies arising from alcohol abuse which are contrary to the efficiency of the Bureau's operations. Such a "firm choice" notice may be required for the Bureau to finalize adverse personnel action against the employee if he/she fails to correct his/her misconduct/performance which arises from alcohol abuse.

(c) In all such matters, it will be the responsibility of the division/office head to determine whether there is a necessity to suspend the employee's privilege to operate a motor vehicle. Such a determination will consider the merits of each case and the government's responsibility to ensure the public's safety through proper licensing of the operator of official motor vehicles.

**1-30.4 Manager and Supervisor Responsibilities (See MAOP, Part I, 1-2, 1-30.1, and 15-3.3.)**

Since sensitivity to employee problems and support of the EAP are integral to good leadership, FBI managers are expected to facilitate employee assistance and outreach efforts. To underscore the importance of these efforts, all management and supervisory personnel will be held directly accountable for any inaction on their part under circumstances which reasonably require their intervention. Such intervention would include:

(1) Encouraging any employee who experiences problems with substance abuse to seek professional assistance on an immediate basis.

(2) Assertively reaching out to co-workers in need of EAP services and take steps to ensure those in need are promptly afforded whatever counseling, treatment or assistance may be necessary. Managers, in particular, are to facilitate employee assistance and outreach efforts.

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